

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of the :
 Application of The Dayton :
 Power and Light Company : Case No. 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. :

:

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. :

- - -

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 9:00 a.m. on Thursday,
 April 6, 2017.

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VOLUME III

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8 Manchester Local School District; and
9 Adams County Ohio Valley School District.

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1 Thursday Morning Session,
2 April 6, 2017.

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4 EXAMINER WALSTRA: We will go on the
5 record.

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

12 My name is Nicholas Walstra. With me is
13 Gregory Price. We are the attorney examiners
14 assigned by the Commission to hear this case.

15 We will skip appearances since we are on
16 day three. We will go ahead with our first witness.

17 Ms. Mooney.

18 MS. MOONEY: Thank you, your Honor. Your
19 Honor, the Edgemont Neighborhood Coalition and Ohio
20 Partners for Affordable Energy call -- call to the
21 stand our witness Cherish Cronmiller.

22 EXAMINER WALSTRA: Thank you.

23 (Witness sworn.)

24 EXAMINER WALSTRA: Please state your name
25 and business address for the record.

1 THE WITNESS: My name is Cherish
2 Cronmiller. My address is 719 South Main Street,
3 Dayton, Ohio 45402.

4 EXAMINER WALSTRA: Thank you. Go ahead,
5 Ms. Mooney.

6 MS. MOONEY: And, your Honor, I would
7 like to have marked as Edgemont Neighborhood
8 Coalition and Ohio Partners for Affordable Energy the
9 testimony of Cherish Cronmiller. It would be our
10 Exhibit 1.

11 EXAMINER WALSTRA: So marked.

12 (EXHIBIT MARKED FOR IDENTIFICATION.)

13 - - -

14 CHERISH CRONMILLER

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

17 DIRECT EXAMINATION

18 By Ms. Mooney:

19 Q. Ms. Cronmiller, do you have before you
20 what has been marked as Edgemont/OPAE Exhibit 1 which
21 is the direct testimony of Cherish Cronmiller in
22 support of the amended stipulation and
23 recommendation?

24 A. Yes.

25 Q. And did you prepare this testimony?

1 A. I did.

2 Q. And if I were to ask you the same
3 questions today, would your answers be the same?

4 A. They would.

5 Q. And do you have any additions or
6 corrections to the testimony?

7 A. I do not.

8 MS. MOONEY: Your Honor, Ms. Cronmiller
9 is available for cross-examination.

10 EXAMINER WALSTRA: Thank you.

11 Any proponent questions?

12 MR. McNAMEE: No.

13 EXAMINER WALSTRA: Any cross? Nothing?

14 MR. GARVER: I just have a few questions,
15 your Honor.

16 EXAMINER WALSTRA: Okay.

17 - - -

18 CROSS-EXAMINATION

19 By Mr. Garver:

20 Q. Good morning, Ms. Cronmiller.

21 A. Good morning.

22 Q. Is it correct under the stipulation the
23 Community Action Partnership will receive \$450,000 on
24 an annual basis during the term of the DMR?

25 A. That is correct.

1 Q. And will that money go to the Community
2 Action Partnership of Dayton or the National
3 Community Action Partnership?

4 A. It would be to the Community Action
5 Partnership of the Greater Dayton Area.

6 Q. Okay. And will all \$450,000 go to CAP or
7 will some of that go to OP&E and Edgemont
8 Neighborhood Coalition?

9 A. All of it will be going to Community
10 Action Partnership of the Greater Dayton Area.

11 Q. Okay. And will Edgemont have any say on
12 how that money is used by the Community Action
13 Partnership?

14 A. No. Edgemont will not have control over
15 the way we utilize those dollars.

16 Q. And is it the same for OP&E, they will
17 also not have control; is that correct?

18 A. That is correct.

19 Q. And is it true that CAP of the Greater
20 Dayton Area serves about eight counties in Ohio?

21 A. We weatherize in nine counties, and we
22 have offices in four counties.

23 Q. And so is it fair to say that the money
24 that CAP receives under the stipulation will only be
25 used in those nine counties?

1 A. No. Actually there's likely that we
2 could work with the State to decide that the -- in
3 the past 26 different agencies had access. Those
4 were entities that obviously had DP&L customers in
5 their service area, and so it could be we decide to
6 work with them to ensure that some of those smaller
7 entities still have access to those as well, though
8 we being in Montgomery County, the problems are we
9 take up a majority of the DP&L area, and we spent out
10 a majority of the dollars.

11 Q. Okay. Thank you. And is it also true
12 that some of the counties that you serve contain --
13 or some of the customers in the counties that you
14 serve are not served by DP&L; is that correct?

15 A. That's correct.

16 Q. And will any of the money from the
17 stipulation go to help customers that are not DP&L --
18 that are not served by DP&L?

19 A. No. Typically we focus on the DP&L
20 customers.

21 Q. Okay. And if you could turn to your
22 testimony at page 2, please. And specifically I am
23 going to be looking at the question and answer at the
24 bottom of that page.

25 A. Yeah.

1 Q. And lines 17 and 18 read "The Stipulation
2 provides for annual assistance to support consumers
3 at or below 200 percent of the federal poverty line
4 or those at risk of losing electric service." Did I
5 read that correctly?

6 A. Correct.

7 Q. And that seems to me that there are kind
8 of two potential groups of people that you can help
9 with this money, the first being those that are at or
10 below 200 percent of the federal poverty line; is
11 that correct?

12 A. Correct.

13 Q. And the second group would be those at
14 risk of losing electric service; is that right?

15 A. Yes.

16 Q. And for the second group there's no --
17 their income for the household or their personal
18 income doesn't matter for that second group; is that
19 right?

20 A. I guess as written it indicates that, but
21 typically we are going to find individuals that are
22 at or below 400 percent of the poverty level.
23 Because we weatherize those individuals based on
24 other dollars, we do look at whether or not those
25 individuals currently have utilities in place before

1 we go and weatherize. And if they are in a place
2 where we need to make sure that they have those
3 utilities on, we will do such.

4 In the past all of the dollars have gone
5 to individuals that are at 200 percent of the poverty
6 level or below.

7 Q. Thank you. And in that -- in line 17 you
8 use the term "to support consumers." Could you just
9 give me -- what does "support" mean? What kind of
10 services or help will you be providing consumers with
11 this money?

12 A. So when individuals come to Community
13 Action Partnership of the Greater Dayton Area, often
14 they are coming in for utility assistance. So I'll
15 be able to use these DP&L funds to focus on electric
16 services which will allow me then to utilize other
17 grant dollars that I have for things such as water
18 shutoffs that aren't supported by any other entities.

19 Q. And when you say focus on electric
20 issues, do you mean all of the money will be used on
21 electric issues?

22 A. Yes.

23 Q. And that would include weatherization?

24 A. No.

25 Q. No? Okay. So it is just help for paying

1 bills.

2 A. Help paying the bills, getting utilities
3 turned back on or ensuring that people can get back
4 onto a payment plan.

5 Q. So is it also true that none of the
6 \$450,000 will go to pay administrative costs for your
7 organization?

8 A. Typically the administration costs have
9 been capped at or below 5 percent. I wouldn't think
10 that we would need more than that because a lot of
11 those administrative costs are paid out of our grant
12 dollars, so we are already providing those services.
13 These dollars we want to focus, you know, to go
14 directly to direct client support.

15 Q. Okay. And then is it also true that none
16 of these funds will go to administrative costs of
17 OP&E?

18 A. That is correct.

19 Q. And the same with Edgemont?

20 A. Yes.

21 MR. GARVER: I have no further questions,
22 your Honor.

23 EXAMINER WALSTRA: Thank you.

24 Anyone else? No?

25 Any redirect?

1 MS. MOONEY: No, no redirect.

2 EXAMINER WALSTRA: Thank you.

3 Thank you, Ms. Cronmiller.

4 MS. MOONEY: Your Honor, I move for the
5 admission of OP&E/Edgemont Exhibit 1.

6 EXAMINER WALSTRA: Any objections?

7 Hearing none, it will be admitted.

8 (EXHIBIT ADMITTED INTO EVIDENCE.)

9 MS. MOONEY: Thank you.

10 EXAMINER PRICE: Mr. Collier, you may
11 call your next witness.

12 MR. COLLIER: Yes. Call Emily Medine to
13 the stand, please.

14 (Witness sworn.)

15 EXAMINER PRICE: Please state your name
16 and business address for the record.

17 THE WITNESS: Emily Medine, Energy
18 Ventures Analysis, 1901 North Moore Street,
19 Arlington, Virginia 22209.

20 EXAMINER PRICE: Okay. Please proceed,
21 Mr. Collier.

22 MR. COLLIER: We are going to mark and
23 circulate two exhibits, your Honor. The testimony of
24 Emily Medine will be Murray Energy Corporation
25 Exhibit 2 and an updated chart which is part of her

1 testimony in color will be Exhibit 2A.

2 EXAMINER PRICE: It will be so marked.

3 (EXHIBITS MARKED FOR IDENTIFICATION.)

4 MR. MICHAEL: I don't think the witness's
5 microphone is on. I was having a little bit of a
6 hard time hearing. If you could ask her to turn it
7 on, please.

8 EXAMINER PRICE: Those two exhibits will
9 be so marked.

10 MR. COLLIER: Your Honor, I would note
11 for the record the Citizens Group to Protect DP&L
12 Jobs has joined in the direct testimony, in support
13 of the direct testimony, and I believe the Local
14 Union has also joined in the testimony.

15 EXAMINER PRICE: Noted. Thank you.

16 MR. CRAWFORD: That's correct.

17 - - -

18 EMILY MEDINE

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

21 DIRECT EXAMINATION

22 By Mr. Collier:

23 Q. Ms. Medine, do you have before you what's
24 been marked as Exhibit 2, your direct testimony, and
25 Exhibit 2A, an updated chart?

1 A. Yes.

2 Q. Did you prepare both documents for
3 purposes of this case?

4 A. Yes.

5 Q. Do you have any additions or corrections
6 to your direct testimony?

7 A. I have one.

8 Q. Okay.

9 A. It occurred several places, but it's the
10 same change with the first place being on page 6,
11 item 16. Subsequent to the preparation of the
12 testimony, I learned that there had been an -- I
13 believe there may have been an extension granted for
14 the divestiture to May 31, 2017. So the January 1
15 date should be changed accordingly.

16 With respect to the content of my
17 testimony, it does not change anything.

18 MR. COLLIER: Your Honor, I am having
19 difficulty with the microphone.

20 A. It keeps going off.

21 EXAMINER PRICE: Sierra Club, did you
22 have an issue?

23 MR. WANNIER: Sorry. I haven't received
24 a copy of the exhibits. I don't know if they are
25 going around.

1 Q. All right. Ms. Medine --

2 MS. BOJKO: Excuse me. Can we all get
3 copies?

4 MR. COLLIER: Sure.

5 Q. Do you have any other additions or
6 corrections to your testimony?

7 A. No, I do not.

8 Q. If I were to ask you the questions in
9 your direct testimony, would your answers be the same
10 as presented in your direct testimony?

11 A. Yes, except for the one I just mentioned.

12 Q. And would the answers be true and
13 correct?

14 A. Yes.

15 Q. Do you adopt your direct testimony in
16 Exhibit 2A as your testimony in this case?

17 A. Yes.

18 MR. COLLIER: Your Honor, I have no
19 further direct. Tender the witness for
20 cross-examination.

21 EXAMINER PRICE: Thank you.

22 Mr. Olikar?

23 MR. OLICKER: No questions, your Honor.

24 EXAMINER PRICE: IEU?

25 MR. PRITCHARD: No questions, your Honor.

1 EXAMINER PRICE: Consumers' Counsel?

2 MR. MICHAEL: No questions, your Honor.

3 EXAMINER PRICE: Sierra Club?

4 MR. WANNIER: Yes. Will your Honor
5 entertain motions to strike at this time?

6 EXAMINER PRICE: Of course.

7 MR. WANNIER: I would like to move to
8 strike several sections of the witness's -- of
9 Ms. Medine's testimony.

10 EXAMINER PRICE: You want to reset your?

11 MR. WANNIER: Oh, is it? Sorry. Can we
12 go off the record for a second?

13 EXAMINER PRICE: Change out with
14 Mr. McNamee.

15 MR. WANNIER: Are we back on the record?

16 EXAMINER PRICE: Yes.

17 MR. WANNIER: Your Honor, I would move to
18 strike several sections of Ms. Medine's testimony
19 that fall primarily into two categories. The first
20 category is based on -- is the objection is based on
21 the fact she is drawing legal conclusions and is not
22 qualified to do so.

23 I can give page citations. The first
24 section would be page 6, lines 4 to 5. And that's
25 the sentence that begins "The PUCO retained its

1 rights to approve divestments under Revised Code
2 4928.17."

3 The second section is also on page 6,
4 lines 14 to 15, and that's the sentence beginning "As
5 the transfer did not take place as required."

6 The next section is page 7, lines 7 to 9,
7 and that's the entirety of paragraph 20 on that page.

8 The next section is page 21 of her
9 testimony, that's lines 1 to 3, and that is the
10 entirety of the witness's answer on those three
11 lines.

12 MR. COLLIER: Could I have that cite?

13 MR. WANNIER: Yeah. Sorry. That is page
14 21, lines 1 to 3.

15 And the last one is also on page 21 --

16 MR. MICHAEL: Can you wait just one
17 second so we can make sure we are on the right page?

18 MR. WANNIER: Yes, I can wait.

19 MR. MICHAEL: We got it. Thank you.

20 MR. COLLIER: I'm sorry. I have page 21.

21 MR. WANNIER: Page 21, lines 1 to 3.

22 This is the paragraph that begins "Obviously this is
23 for the PUCO to decide. My understanding is that"
24 and the rest of that.

25 And the last is also on page 21, lines 6

1 to 8, and that's beginning with the sentence "As that
2 approval expired at the end of 2016," et cetera.

3 EXAMINER PRICE: I will give you a moment
4 to argue the lack of legal conclusion and then we
5 will go on to Mr. Collier.

6 MR. WANNIER: Yes. So all of these are
7 opinions by the witness based on her understanding of
8 Ohio statute which -- and they are legal in nature,
9 and she is not here today to testify based on her
10 legal expertise.

11 EXAMINER PRICE: Thank you.

12 Mr. Collier?

13 MR. COLLIER: Yes, your Honor.
14 Ms. Medine has not been offered as an attorney nor is
15 she purporting to render a legal conclusion. As an
16 expert in the field and the PUCO procedures and the
17 history of deregulation, she has a working knowledge
18 of the provisions of these statutes and can testify
19 to that extent.

20 Again, these should not be interpreted as
21 an opinion of law but rather the regulatory
22 environment in which we all operate.

23 EXAMINER PRICE: Isn't she going a bit
24 beyond what we normally allow in terms of drawing
25 legal conclusions about -- I am focusing on 21,

1 page 21, lines 6 through 8. She is drawing the
2 conclusion that the Commission's approval of Dayton's
3 application to transfer its generation assets has
4 expired and what Dayton's required to do. Isn't that
5 a bit beyond where we normally give lay witnesses
6 some leeway and allow them to testify as to
7 regulatory matters?

8 MR. COLLIER: I don't think so given the
9 events that have occurred in this case, your Honor.
10 First of all, there is a long history of the issue of
11 divestiture that was addressed principally by the
12 Commission in Case No. 13-2420-EL-UNC, a case and the
13 implications of which have been addressed by a number
14 of witnesses in this very proceeding. Factually the
15 Commission addressed divestiture initially,
16 established that the divestiture would include at net
17 book value with environmental liabilities and would
18 do so in a manner to fully insulate ratepayers. The
19 issue of the retaining of the debt was not addressed
20 in that case.

21 The Commission also granted Dayton Power
22 and Light a number of extensions on the transfer.
23 No. 1, because there was a potential buyer out there
24 to pursue the assets; and, No. 2, Dayton Power and
25 Light had to deal with bond implications, creditor

1 implications with regard to that transfer.

2 The Commission established a date of
3 January 1, 2017, for this transaction to have
4 occurred and be consummated. That did not occur.
5 And the assets today remain on the books of Dayton
6 Power and Light and are the subject now of the
7 stipulation.

8 MR. WANNIER: Your Honor, Mr. Collier is
9 not here to testify as to facts.

10 MR. COLLIER: Can I please?

11 MR. WANNIER: He is giving a factual
12 summary of events.

13 EXAMINER PRICE: He can make whatever
14 arguments he wants to make, and the Commission -- I
15 think we are capable of understanding what he is
16 doing. But, no, no, he is not doing very much to
17 address her qualification to make these comments.

18 MR. WANNIER: Okay.

19 MR. COLLIER: So in any event, whether
20 there was a deadline for that action and the -- and
21 the resulting impacts of the failure to abide by that
22 deadline and the implications now in this stipulation
23 and with regard to the financial crisis the company
24 purports to be in are issues before the Commission.

25 Now, Ms. Medine has said obviously it's

1 for the Commission to work all this through. And she
2 can take the position as an expert that there was an
3 approval engrained in what has occurred up to this
4 point and there is an issue for the Commission to
5 determine as to whether there is approval. I think
6 that's as far as she is going with her testimony, and
7 she's not making a legal opinion. That will be
8 something that will be subject to briefing and that
9 sort of thing. But certainly the facts that lead up
10 to all of this where we find ourselves today under
11 the regulatory regime are relevant.

12 MR. KUMAR: Your Honor. Over here.

13 EXAMINER PRICE: There you are.

14 MR. KUMAR: While I agree with
15 Mr. Collier, I wish -- I was wondering if I could be
16 heard on two of the specific motions to strike.
17 First of all, on line 21, lines 1 through 3, it
18 appears that Ms. Medine is just simply stating her
19 understanding of Ohio's corporate separation, not a
20 legal conclusion.

21 And then also on page 6, lines 14 and 15,
22 that doesn't also appear to be a legal conclusion.
23 That appears to be a factual question as to whether
24 or not the plants actually closed.

25 EXAMINER PRICE: What makes you say she's

1 not making a legal conclusion on 21, lines 1 through
2 3? Let me finish. She's saying "My understanding is
3 that under Section 4928.17 of the Ohio Revised Code
4 the PUCO must approve of a corporate separation
5 plan." She's drawing a legal conclusion as to what
6 the current status of their plan is and what we have
7 to do.

8 Plus, if you go further, I understand you
9 are not disputing this one, she's talking about the
10 Commission losing its right to approval of a
11 transfer. She's talking about the rights and
12 responsibilities of the Commission. Isn't that
13 clearly a legal question, Mr. Kumar?

14 MR. KUMAR: Well, your Honor, I most
15 respectfully disagree. My understanding of those
16 first few lines is simply a policy analysis of how
17 corporate separation must occur in Ohio rather than a
18 legal conclusion regarding whether corporate
19 separation has occurred or not or, you know.

20 EXAMINER PRICE: Sierra Club, you can
21 respond.

22 MR. WANNIER: Your Honor, I respectfully
23 agree with your Honor.

24 EXAMINER PRICE: Good choice.

25 MR. WANNIER: You know, Murray Energy is

1 free to brief these legal questions in their
2 post-hearing briefs. And Mr. Collier has testified
3 as to several factual issues that are in Ms. Medine's
4 testimony, and we are not moving to strike the
5 factual underpinning to her legal conclusions. We
6 are simply moving to strike the portion of her
7 testimony where she is drawing legal conclusions from
8 the factual situation that she's laid forward.

9 MR. COLLIER: I would also add, your
10 Honor, that if Medine -- Ms. Medine was questioned on
11 this issue and her understanding -- I suspect she
12 would testify that her understanding is provided upon
13 advice of counsel.

14 EXAMINER PRICE: That makes her testimony
15 worthless because I can't -- I can't cross-examine
16 her on the advice of counsel or any other party can't
17 cross-examine on her advice of counsel.

18 MR. COLLIER: Well, but you can
19 cross-examine her on -- the parties may cross-examine
20 her on her understanding.

21 MR. WANNIER: Your Honor, I am happy --

22 EXAMINER PRICE: Let me finish. If her
23 understanding is based solely on the advice of
24 counsel, then her testimony adds nothing because
25 whatever your advice is to the Commission you will

1 put in your brief. She is actually going way beyond
2 what we normally allow lay witnesses. She is drawing
3 conclusions with what is the status of certain cases,
4 whether certain items are subject to the Commission's
5 jurisdiction today, and we are going to grant the
6 motion to strike in its entirety.

7 MR. WANNIER: Thank you.

8 MR. COLLIER: As to each of the items,
9 questions and answers that were referenced by the --

10 EXAMINER PRICE: In the first motion.

11 MR. COLLIER: Only those.

12 MR. WANNIER: Yes, as to the first.
13 Thank you, your Honor.

14 The second portion of our motion to
15 strike is on the grounds of hearsay. And these are
16 situations where the witness has cited to newspaper
17 articles and other outside sources for the truth of
18 the matter asserted which is the legal definition of
19 hearsay.

20 I will give those citations now. The
21 first is on page 5, lines 3 to 7, which is the
22 entirety of paragraph 8.

23 MR. COLLIER: Let me catch up with you.

24 MR. WANNIER: I will give the citations
25 first, and then I can give my short argument on each

1 one because in this case, the arguments are more
2 individual to the motion -- or to the section.

3 The second citation is on page 9, lines 1
4 to 4. And that's the entirety of the witness's
5 response on the top of that page.

6 The third citation is page 12, lines 4 to
7 5, and that's actually just the sentence beginning
8 "Dynergy just announced a trade of its ownership in
9 Conesville." Well, the full sentence "Conesville #4
10 for AEP's ownership in Zimmer."

11 And actually the fourth one is a separate
12 motion, but on the same page, lines 5 to 6, it's the
13 next sentence that reads "In 2014, DP&L sold its
14 position in East Bend to Duke Energy Kentucky."

15 The fifth citation is on page 19,
16 lines 12 to 18, and then this also goes through to
17 page 20, lines 1 and 2.

18 EXAMINER PRICE: Can I have that again,
19 please? Start over again on that one, please.

20 MR. WANNIER: Oh, sorry. That one was
21 page 19, line 12, through page 20, line 2. And
22 that's her reference to the Sierra Club and DP&L
23 press releases.

24 And the final section is on page 32,
25 lines 16 and 17, and that's the sentence reading "It

1 is interesting, however, that AEP announced its bid
2 for Stuart" -- "Stuart cleared the auction for
3 2018/19."

4 MR. COLLIER: I'm sorry. What's the
5 cite?

6 MR. WANNIER: That's page 32, lines 16
7 and 17, that very last sentence of the witness's
8 response. And I can go through and give the
9 arguments individually, your Honor, at this time.

10 EXAMINER PRICE: Go ahead.

11 MR. WANNIER: So the first citation on
12 page 5, the -- here the witness is citing to DP&L and
13 Sierra Club press releases and citing to those press
14 releases for the truth of the facts that were in
15 those releases. The Sierra Club has not -- is not
16 presenting any witnesses in this hearing, and DP&L
17 did provide witnesses, so if Murray Energy wanted to
18 ask about those press releases, one of the DP&L
19 witnesses would have been the appropriate party to
20 ask about them. But it's inappropriate to bring
21 those -- that reference in at this time.

22 The second --

23 EXAMINER PRICE: Let's stick --

24 MR. WANNIER: Do them one at a time?

25 That's --

1 EXAMINER PRICE: Actually I think we will
2 go through and rule on them one at a time to make a
3 record. Before I ask -- recognize Mr. Collier on
4 this one, I don't disagree the press releases are
5 hearsay and that we typically do not allow the
6 introduction of press releases or references to them
7 in our hearings. But in this particular case, since
8 it's -- the press releases are statements by party
9 opponents, Sierra Club and Dayton Power and Light,
10 why does that hearsay exception not apply here?

11 You certainly could put on a witness and
12 say that's not what we said; that's not what we
13 meant. And Dayton could have put on a witness saying
14 here is the press release. This is not what it said.
15 This isn't a third party. This is a press release
16 which clearly would be objectionable. This is a
17 statement by Dayton Power and Light and by Sierra
18 Club.

19 MR. WANNIER: Your Honor, I don't believe
20 that exception applies here because --

21 EXAMINER PRICE: It's administrative law.
22 We can construe exceptions as broadly as we like.

23 MR. MICHAEL: Or as narrowly, as the case
24 may be.

25 MR. WANNIER: The Sierra Club is not a

1 party opponent to -- has not taken a formal position
2 either way on the stipulation, and so I don't think
3 that the party opponent exception would apply here.

4 EXAMINER PRICE: I think you are a party
5 opponent to Murray Energy. That much is clear today.

6 Mr. Collier.

7 MR. COLLIER: Yes. First of all, I don't
8 think the hearsay rule necessarily applies in full
9 effect in administrative hearings. It goes to the
10 weight of the evidence. You are entirely correct,
11 your Honor, if Sierra Club wished to put on a witness
12 to contest, they certainly could have done so. The
13 fact that the press releases are out there, have not
14 been withdrawn by any witness, I think is -- that
15 goes again to the evidence.

16 I find -- first of all, I find Sierra
17 Club's position in this entire case to be somewhat at
18 issue because it initially opposed the ESP but
19 apparently did not participate in the negotiations,
20 and its interests were not addressed in the amended
21 stipulation and cross-examination.

22 EXAMINER PRICE: What's your basis for
23 saying they didn't participate in the negotiations?

24 MR. COLLIER: I think they participated
25 in the negotiations, but I think it's been

1 represented, I think we know that they weren't a
2 signator to the stipulation, nor were they a
3 nonopposing party. They are not taking a position
4 one way or the other as to the stipulation so why is
5 he even cross-examining our witness?

6 EXAMINER PRICE: Is that fair? Do they
7 have to take a position?

8 MR. COLLIER: Well, I think it's an
9 issue, your Honor, as to what their position really
10 is in this case.

11 MR. WANNIER: Your Honor.

12 EXAMINER PRICE: He is definitely adverse
13 to your position, but I don't know why that --
14 whether they take a position on the stipulation is
15 relevant one way or the other.

16 MR. WANNIER: And if I can add something
17 further, your Honor, this statement on page 5 also
18 misconstrues the Sierra Club's position in this case.
19 The implication here is that Sierra Club supports the
20 stipulation, and as you well know, the Sierra Club
21 has not taken a position either way on the
22 stipulation.

23 EXAMINER PRICE: Again, you had the
24 ability to put on a witness and say that's not what
25 our position is and there you have chosen not to.

1 We are going to deny the motion to
2 strike. We are actually pretty strict in this
3 hearing room about hearsay, but we do try to construe
4 the exceptions broadly and will go ahead and construe
5 the party opponent on this one broadly and allow the
6 statement.

7 MR. WANNIER: Understood, your Honor.
8 And just to save us some time, would that same
9 justification also apply to the selection on page 19
10 and 20 which is also a citation to the press?

11 EXAMINER PRICE: Oh, most certainly.

12 MR. WANNIER: Moving on to the next one
13 which is on page 9, yeah, in this case the witness is
14 citing to a Business Wire report which is not --
15 Business Wire is not a party to this proceeding, and
16 she is citing to that report for the truth of the
17 matter asserted.

18 EXAMINER PRICE: Mr. Collier.

19 MR. COLLIER: I think the Sierra Club
20 attorney can pursue that in cross-examination as to
21 the basis for the statement, but I think the evidence
22 could very well indicate that Business Wire is an
23 accepted industry publication and, therefore, was, in
24 fact, reported publicly, and she can testify to that
25 fact.

1 MR. WANNIER: And, again, your Honor, I
2 will just note that Murray Energy can cite -- can use
3 the citation in their post-hearing briefing as
4 evidence there, but it would not be valid to wrap
5 that into Ms. Medine's testimony today.

6 MR. COLLIER: I also think this falls
7 within the material that an expert witness is
8 entitled to rely on in support of her written
9 testimony.

10 EXAMINER PRICE: I think we are going to
11 grant in part and deny in part the motion. I think
12 the part -- the first sentence is certainly widely
13 known. IP&L's status is not a mystery to anyone.
14 The second sentence I think appears to rely solely on
15 the Business Wire report and is hearsay, so we are
16 going to strike the second sentence but not the first
17 sentence.

18 MR. KUMAR: Your Honor, could you specify
19 exactly where that begins? Is it the sentence
20 starting "It is a fully regulated utility"?

21 EXAMINER PRICE: I'm sorry. You are
22 correct. I am misstating this. The third sentence
23 is being struck so the lines "IP&L," "IP&L, Indiana
24 Power and Light Company, is a fully regulated utility
25 which AES acquired in 2000" can stay. The second --

1 the third sentence beginning "In 2014," will be
2 stricken -- will be stricken.

3 MR. WANNIER: And moving -- moving on to
4 page 12, and these two are right next to each other,
5 lines 4 to 5 and 5 to 6 so I will just talk about
6 them together. Both of these are citations again to
7 outside sources, neither crossroadstoday.com nor
8 cincinnati.com are parties to this proceeding.

9 EXAMINER PRICE: Consistent with our
10 prior rulings, the second motion beginning with the
11 phrase "In 2014," Dayton could put on a witness to
12 dispute that if they chose to, so we will deny that.
13 And the first sentence beginning with "Dynergy" just
14 we will grant the motion to strike. Appears to be
15 based solely on the press release.

16 MR. WANNIER: Sorry. To be clear, the
17 sentence beginning "Dynergy just announced" will be
18 stricken?

19 EXAMINER PRICE: Yes.

20 MR. WANNIER: The sentence "In 2014" will
21 not be stricken.

22 EXAMINER PRICE: That's correct.

23 MR. WANNIER: Thank you. And the final
24 one on page 32, sorry, the microphone dropped again,
25 again, here AEP is not -- is not a party to this

1 proceeding and this is a statement by an outside
2 party.

3 EXAMINER PRICE: What's your basis -- you
4 don't have a citation for that. What is your basis
5 for that?

6 THE WITNESS: I found a report that had
7 occurred. It's probably immaterial to the testimony,
8 so I'm certainly okay with it being struck.

9 EXAMINER PRICE: Good. We are going to
10 strike then.

11 MS. BOJKO: Your Honor, which page was
12 that on?

13 EXAMINER PRICE: 32, lines 16 and 17.

14 MS. BOJKO: Okay.

15 EXAMINER PRICE: Any further motions to
16 strike?

17 MR. WANNIER: Your Honor, if it's all
18 right with you, I reserve the right to bring a
19 further motion to strike depending on some of the
20 witness's responses to cross.

21 EXAMINER PRICE: That's fine.

22 MR. WANNIER: Thank you.

23 EXAMINER PRICE: Please proceed.

24 - - -
25

CROSS-EXAMINATION

By Mr. Wannier:

Q. Good morning, Ms. Medine.

A. Good morning.

Q. Ms. Medine, I am going to ask you a series of questions that address both the Killen plant and the Stuart plant, and all of these sentences will -- I will ask if -- if something is the case for both plants, and if it's not the case for either of those plants, I would ask that you identify that.

MR. WANNIER: And is that okay with opposing counsel?

MR. COLLIER: Yeah.

MR. WANNIER: I can also ask about the plants individually.

MR. COLLIER: No, no. Yes. You're fine.

MR. WANNIER: Okay.

Q. (By Mr. Wannier) Ms. Medine, in your understanding the stipulation does not address the closure of Killen or Stuart, right?

A. The stipulation itself does not.

Q. Thank you. And nothing in the stipulation would prevent DP&L or AES after transfer from selling their interests in Killen or Stuart,

1 correct?

2 A. With respect to the stipulation itself,
3 that is correct.

4 Q. And, in fact, you, yourself, have
5 testified that DP&L has periodically solicited bids
6 for all of its coal-generation assets, right?

7 A. If you are referring to the specific
8 lines in my testimony?

9 Q. Yeah, sorry. I can refer you to your
10 direct testimony. That's on page 26, line 19.

11 A. My testimony stands.

12 Q. Your testimony stands and that includes
13 you are referring also to Killen and Stuart in there.

14 A. Correct. DP&L operates both the Killen
15 and Stuart power plants.

16 Q. Yes. And you have testified that they
17 have periodically solicited bids for those plants.

18 A. My testimony stands.

19 Q. Thank you. Furthermore, nothing in the
20 proposed stipulation would prevent a third party from
21 contacting DP&L or AES after transfer and trying to
22 buy Killen or Stuart, right?

23 A. Nothing in the plain language of the
24 stipulation does that, correct.

25 Q. Now, you were engaged as a witness in

1 this matter between two and three weeks before you
2 filed your testimony, right?

3 A. Before I filed my original testimony,
4 correct.

5 Q. On March 1?

6 A. Whatever the date was.

7 Q. Yeah. And in doing your analysis, and
8 indeed both in the original testimony and in the
9 testimony that we are considering today, in preparing
10 either of those testimonies, you didn't analyze the
11 impact closure of Killen or Stuart might have on
12 DP&L's credit rating, right?

13 A. The focus was on whether it was harmful
14 to ratepayers and to the area in which the power
15 plants are located, correct.

16 Q. Thank you. And you haven't done any
17 analysis of the financial integrity of DP&L, right?

18 A. I've discussed the financial issues
19 related to DP&L, but my analysis focused on the
20 impact of the lost generation on -- on customers and
21 on the local -- localities in which the plants were
22 located.

23 Q. Right. And so to be clear, that analysis
24 did not -- your individual analysis did not include
25 an analysis of the financial integrity of DP&L.

1 A. Correct. My issue is not the financial
2 integrity of DP&L.

3 Q. Yeah. And you haven't done any analysis
4 of the financial integrity of DPL Inc. either, have
5 you?

6 A. Other than providing the context, I have
7 not done the additional analysis.

8 Q. You haven't done your own analysis.

9 A. I have not done my own analysis, correct.

10 Q. And you haven't -- you also have not
11 reviewed the financial projections of the coal
12 plants' cash flow that were presented by DP&L, right?

13 EXAMINER PRICE: You need to reset your
14 microphone.

15 A. I was not aware they were available.
16 They were not available, I believe, in the -- on a
17 nonconfidential basis. I did not see them.

18 Q. Okay. Have you seen them now?

19 A. No.

20 Q. You have not. And actually speaking of
21 confidential information, you didn't review any
22 confidential information in this case before filing
23 your testimony, correct?

24 A. Correct.

25 Q. And have you reviewed any confidential

1 information since filing your information?

2 A. The only information we reviewed that was
3 confidential was the redacted portion of Witness
4 Malinak's explanation about the impact of the
5 closures.

6 Q. Would that have impacted your testimony?

7 A. There was nothing there, no.

8 Q. Okay. And you didn't review any
9 discovery in the case in preparing your testimony.

10 A. No. My focus was the impact on a market
11 basis of the closure of the Killen and Stuart power
12 plants.

13 Q. Understood. And you also did not review
14 the most recent SEC filings by DP&L, DPL, AES,
15 Dynegy, or AEP in preparing this testimony?

16 A. I believe you asked me that. I was not
17 sure about -- I thought I had reviewed the most AES,
18 but I am not sure of the timing of the filings of
19 the -- I had reviewed certainly the 2015 numbers. I
20 am not sure if the 2016 annuals were out at the time
21 I prepared my initial testimony.

22 Q. Okay. So your -- you can't say for sure
23 that you reviewed the 2016 financials.

24 A. No. The financials that I reviewed and
25 incorporated into my testimony are footnoted.

1 Q. Understood. Thank you. Now, you also
2 haven't undertaken any individual effort to value
3 Killen or Stuart, right?

4 A. Again, the purpose of my testimony was to
5 demonstrate that these power plants are in-the-money
6 power plants based upon our analyses and that our
7 experience is the best way to determine what the
8 value is to offer the power plants into the market
9 for sale and the highest bidder would win. So our
10 analysis was irrelevant to the determination of
11 whether we thought a party would be interested and
12 what price they would pay.

13 MR. WANNIER: Your Honor, I am going to
14 move to strike that entire response. I am just
15 asking a very simple question, "yes," "no" questions.

16 A. So --

17 EXAMINER PRICE: We are going to deny the
18 motion to strike, but if you ask her a follow-up, I
19 am sure she will answer "yes" or "no."

20 MR. WANNIER: Okay.

21 THE WITNESS: Yes.

22 Q. So to be clear -- well, I have to ask it
23 again. Now, you have not undertaken any individual
24 effort to value Killen or Stuart, correct?

25 A. Not Killen or Stuart but we are aware of

1 some of the market prices for power generations
2 located on the river.

3 Q. The answer is "yes"?

4 A. Again, it would be a generic analysis of
5 power plants that are being sold on the river and
6 what they are being sold for and to the extent they
7 are -- that is relevant for the Killen and Stuart, so
8 I did not do an analysis just looking at negative
9 cash flow, no.

10 Q. Okay. I am just going to ask it again,
11 you have not done an individual analysis of the value
12 of Killen and Stuart.

13 MR. MICHAEL: Objection, asked and
14 answered.

15 EXAMINER PRICE: She hasn't answered it
16 yet.

17 MR. MICHAEL: I thought it was pretty
18 clear.

19 EXAMINER PRICE: Let me finish. I am
20 going to direct you to answer that question "yes" or
21 "no" right now.

22 THE WITNESS: No.

23 EXAMINER PRICE: Thank you.

24 Q. And you also have not tried in any way to
25 estimate the closing and/or retiring obligations for

1 either plant, correct?

2 A. I would have done that as part of my
3 analysis. I did not do that because I was not -- I
4 wasn't doing an independent evaluation. That wasn't
5 the point of my testimony.

6 Q. Okay. And you also have not seen any
7 cash flow projections for Killen or Stuart.

8 A. Correct.

9 Q. Okay. Can you please turn to page 14 of
10 your -- of your direct testimony. Now, you say there
11 you acknowledge there that poor performance at Stuart
12 has been a major issue at the plant, right?

13 A. Yes.

14 Q. And you would agree that the plant's
15 capacity factor -- well, sorry. Strike that.

16 Would you say that 60 percent capacity
17 factor is generally considered baseload?

18 A. Obviously it varies, but 60 percent I
19 would consider generally to be baseload.

20 Q. Okay. And --

21 EXAMINER PRICE: Restart your microphone.

22 Thank you.

23 Q. And in the last three years, Stuart has
24 not met that metric, correct?

25 A. Correct. I think this table should say

1 the first half of 2016. I don't have the full year
2 2016 here.

3 Q. Understood. But with -- for the data
4 that you have, you don't see any indication from the
5 data that you provided to the Commission that Stuart
6 has met that metric, correct?

7 A. In the first -- correct, for the first
8 two-and-a-half -- the last two-and-a-half years.

9 Q. And so you would agree that the plant's
10 capacity factor for the data that you have in your
11 direct testimony does not indicate any material
12 improvement in performance since 2015, correct?

13 A. There's only six months of data since
14 2015. So for the six months of data from 2015, I
15 would agree with you.

16 Q. Okay. And you would agree that there's
17 been a move toward the closure of coal-fired power
18 plants in the last few years, right?

19 A. Move, the large number of retirements had
20 already occurred primarily related to compliance with
21 the Mercury Air Toxic Standard which we refer to as
22 MATS so -- so these units were fully met -- are fully
23 MATS compliant. And so that's one reason they were
24 not deemed to be candidates for closure.

25 MR. WANNIER: Move -- can I have that

1 answer read back, your Honor?

2 EXAMINER PRICE: You may. Let's have the
3 question also, please.

4 (Record read.)

5 MR. WANNIER: I would ask to move that
6 entire response -- move to strike the entire
7 response.

8 EXAMINER PRICE: Denied. You asked her a
9 broad question. She gave you a broad answer.

10 Q. Okay. Let me rephrase. Would you agree
11 that there is certainly a move toward the closure of
12 coal-fired plants?

13 A. If you don't want the same answer, you
14 will have to make it a little narrower question.

15 Q. Would you agree in recent years in --
16 generally in the coal industry, there has been a
17 trend of more coal plants retiring?

18 A. Unfortunately the answer is the same.
19 The reason for the large retirements in the eastern
20 U.S. were tied to MATS compliant. Those plants that
21 were MATS compliant were not part of that wave. In
22 the western U.S. the retirements were primarily due
23 to regional pay settlements so there were specific
24 reasons there were plant retirements in recent years.

25 Q. Okay. Would you agree that the current

1 market for coal is a challenging market?

2 A. The price for natural gas in 2015 made it
3 a challenge for coal plants to operate. Most
4 forecasters are calling for an increase in natural
5 gas prices which put coal -- remaining coal plants
6 back in the money, and so it is a challenge to get
7 through that period. But post-2016, 2017, and
8 beyond, we think there is a lot of opportunity for
9 coal plants.

10 MR. COLLIER: Your Honor, the microphone
11 is cutting out.

12 EXAMINER PRICE: It's fighting with you.

13 Q. That's okay. The microphone is fighting
14 with me as well.

15 A. I was going to say the attorney is
16 controlling those.

17 Q. Ms. Medine, your deposition was taken in
18 this case this past Saturday, right?

19 A. Yes.

20 MR. WANNIER: Okay. May I approach?

21 EXAMINER PRICE: You may.

22 MR. WANNIER: I am going to ask the court
23 reporter to mark as Sierra Club Exhibit 1 a copy of
24 the public portion only of the transcript of your
25 deposition that was taken on Saturday. I am going to

1 bring it over and if you could take a moment to
2 satisfy yourself that it, in fact, looks like that.

3 EXAMINER PRICE: Counsel, are you using
4 this solely to impeach her?

5 MR. WANNIER: I am.

6 EXAMINER PRICE: You don't need to mark
7 it.

8 MR. WANNIER: I don't need to mark it.
9 Understood. Thank you.

10 MR. COLLIER: And if he is using it for
11 impeachment, I would suggest he ask a question first;
12 and if he is not satisfied with the answer, he can
13 present her deposition.

14 EXAMINER PRICE: He asked a question.

15 MR. COLLIER: All right.

16 MR. WANNIER: I asked a question.

17 EXAMINER PRICE: Since he is handing out
18 the deposition we can assume he wasn't satisfied.

19 MR. CRAWFORD: Excuse me. Could we get a
20 copy of the exhibit?

21 MR. WANNIER: Sure. Let me bring one to
22 you.

23 EXAMINER PRICE: Counsel, I have an odd
24 copy, the copy something.

25 MR. WANNIER: Oh, no.

1 EXAMINER PRICE: It's no problem. I
2 don't know if this is confidential or what this
3 document is, and I don't want to have it.

4 THE WITNESS: I can't read it.

5 EXAMINER PRICE: Do your best. Can I
6 have a different copy and take this one away?

7 MS. WHITFIELD: Here, he can have mine.

8 MR. WANNIER: I apologize, your Honor.

9 EXAMINER PRICE: I don't know what it is.
10 If it's something important to you guys, I don't want
11 to have it.

12 MR. MICHAEL: Clean coal strategic plan
13 of Sierra Club.

14 EXAMINER PRICE: Exactly. Somebody left
15 the wrong thing on the printer.

16 MR. WANNIER: Is that a good copy, your
17 Honor?

18 EXAMINER PRICE: Yes.

19 Q. (By Mr. Wannier) If you could turn,
20 please, to page 87 of your testimony.

21 A. I hate to be difficult, and I appreciate
22 your efforts in conserving paper, but older witnesses
23 cannot read small print like this. So I can't really
24 see the words, so I will have to look at my counsel
25 to see if he agrees that's what's there.

1 Q. I will represent to you and -- oh, you
2 have.

3 MR. STOCK: We have got a full page copy.

4 MR. COLLIER: If I may approach, your
5 Honor.

6 EXAMINER PRICE: You may.

7 Q. If you can turn to page 87, line 6.

8 A. Yes.

9 Q. Now, reading that, you testified, I
10 think, and I am quoting "I think that there is no
11 question that the current market is a challenging
12 market," and you said this in the context of a
13 question about the coal market, correct?

14 A. Correct. And I think I said that as well
15 here.

16 Q. Okay. Now, and you have testified also
17 that --

18 MR. COLLIER: Wait, wait. If he is
19 questioning her for impeachment purposes and he is
20 taking one sentence out of her answer, I think
21 it's -- the correct approach would be to pose the
22 question, she reads the answer, and then he can
23 follow up as to whether that's inconsistent. But you
24 can't take one line out of context. That doesn't
25 impeach her. She said that's what I said before.

1 EXAMINER PRICE: He is free to do his
2 impeachment the way he wants, and we will be the
3 judge whether it's effective or not. If you would
4 like to follow up on redirect on that matter, you
5 may.

6 MR. COLLIER: Okay.

7 Q. And you have also -- if you could turn to
8 page 25 of your testimony.

9 A. Yes.

10 Q. On line 3, you state that "the Energy
11 Information Administration also forecasts a
12 resurgence" -- "a resurgence in coal generation
13 during this period without the Clean Power Plan." Do
14 you see that?

15 A. Yes.

16 Q. Okay.

17 MR. WANNIER: Your Honor, may I approach?

18 EXAMINER PRICE: You may.

19 Q. Now, if you can take a look at this
20 document which I am now marking as Exhibit Sierra
21 Club 1.

22 EXAMINER PRICE: It will be so marked.

23 (EXHIBIT MARKED FOR IDENTIFICATION.)

24 Q. Ms. Medine, this is the EIA report you
25 cited at footnote 24 on page 25 of your testimony,

1 correct?

2 A. Yes.

3 Q. And you -- this citation was to support
4 your testimony about EIA forecasting a resurgence in
5 coal generation without the Clean Power Plan,
6 correct?

7 A. Yeah. For the record I think in our
8 discussion on Saturday I changed the word for
9 "resurgence" to "rebound" but that's correct.

10 Q. Okay. That's fine. Ms. Medine, well, as
11 you said, you -- in your deposition you stated that
12 resurgence was maybe not the right characterization.

13 EXAMINER PRICE: Wait a second. What she
14 said was totally not responsive whether you had a
15 question pending or not. So we are just going to
16 strike the rebound versus resurgence, and Mr. Collier
17 can raise this on redirect if he thinks it's
18 important.

19 MR. WANNIER: Well, I actually will ask
20 that question. I think Ms. Medine was anticipating
21 my question.

22 EXAMINER PRICE: Well, let's try to keep
23 the record clean here, question and answer and not
24 answer then question.

25 MR. WANNIER: Understood, your Honor.

1 Q. (By Mr. Wannier) Now, Ms. Medine, in your
2 deposition on Saturday, you stated that resurgence
3 was maybe not the right characterization of this EIA
4 report, correct?

5 A. I exactly said the resurgence was not the
6 best word, yes.

7 Q. Okay. Ms. Medine, are there any other
8 places in your testimony where you have exaggerated
9 reports?

10 MR. COLLIER: Objection.

11 EXAMINER PRICE: Argumentative?

12 Sustained.

13 MR. WANNIER: This is an opposing
14 witness, your Honor.

15 EXAMINER PRICE: You still can't ask her
16 argumentative questions.

17 Q. All right. Are there other examples in
18 your testimony, Ms. Medine, where you may not have
19 used the best word to describe?

20 A. Not to my knowledge.

21 Q. Okay. And if you can turn to page --
22 and -- well, actually let's turn to page 69 of
23 Exhibit -- of Exhibit Sierra Club 1.

24 MR. CRAWFORD: Is there an additional
25 copy of Sierra Club Exhibit 1?

1 MR. WANNIER: Oh, did one not make it
2 down to you? Actually you can have this one.

3 MR. CRAWFORD: I got it. Thank you.

4 MR. WANNIER: You don't need one? All
5 right.

6 Q. (By Mr. Wannier) That's the chart that
7 you were citing to in your testimony, correct?

8 A. Yes.

9 Q. And you would agree that the no Clean
10 Power Plan case continues to show coal generation
11 would remain 25 to 30 percent below its -- what its
12 levels were at the start of the decade?

13 A. Yes.

14 Q. Thank you. Can you please turn to page 7
15 of your direct testimony and specifically line 11
16 which is also paragraph 22.

17 A. Yes.

18 Q. Now, do you see there where you talk
19 about the severe community economic consequences from
20 closure of Stuart and Killen?

21 A. Yes.

22 Q. Would you agree that there are several
23 instances where plants have been sold to new buyers
24 only to be closed a few years later?

25 A. Are you -- do you have examples to

1 provide?

2 Q. I can give one. Dynegy, for instance,
3 has purchased coal plants recently and -- purchased
4 coal plants and moved to retire them recently, right?

5 A. Yes.

6 Q. And they have demonstrated willingness to
7 close coal plants in Ohio, right?

8 A. Are you referring to Stuart?

9 Q. Well, including Stuart.

10 A. Yes.

11 Q. And you would agree that it's entirely
12 possible that even after a sale of Killen and Stuart,
13 the purchaser could turn around and close them in a
14 couple of years.

15 A. Yes.

16 Q. Now, you are aware that -- are you also
17 aware that the owners of Killen and Stuart, by which
18 I mean AES, AEP, and Dynegy, have taken impairments
19 on Killen and Stuart to the degree that they have
20 ownership interests?

21 A. As I mentioned, yes, I am aware.

22 Q. And that was done in 2014.

23 A. I don't specifically recall.

24 Q. Okay. That's fine. And are you aware
25 that AEP has valued its ownership interest in Stuart

1 at zero dollars?

2 A. I am not sure of the exact number, but I
3 would accept that as -- if that's what you are
4 proffering.

5 Q. You don't have individual knowledge of
6 that fact?

7 A. I may. I just at this moment can't
8 recall if I have actually seen that number. It
9 wouldn't surprise me. I am not arguing with you. I
10 am just saying that at my fingertips I can't confirm.

11 Q. That's fine. We can move on. Are you
12 also aware or would you accept that Dynegy has valued
13 its interest in Stuart at zero dollars?

14 A. Again, I wouldn't be surprised.

15 Q. And are you aware of any of these
16 companies indicating that the value of their coal
17 assets has increased since taking those impairments?

18 A. Again, I'm not sure of that relevance,
19 but I would not be surprised.

20 Q. And, in fact, you would expect that to be
21 the case, right?

22 A. Not necessarily. I'm not speaking from
23 an accounting perspective, not necessarily. The fact
24 that it was -- it booked at zero may have tax
25 reasons, implications, and the like.

1 Q. But you -- in your understanding of the
2 coal industry, you would not guess that any of these
3 plants would have in -- would have increased --
4 indicated the value of their coal assets had
5 increased since taking impairments, right?

6 A. I would assume that they are following
7 accounting principles and whatever is required that's
8 what they -- what they provide.

9 Q. I'm not -- I'm sorry. I'm a little
10 confused by your answer.

11 A. Okay.

12 Q. Would you expect any of these companies
13 to have indicated an increase in the value of their
14 coal plant since taking the impairment?

15 A. What I would expect is for them to follow
16 accounting principles and if accounting principles
17 required them to increase the value of their plants
18 on their books, they would go ahead and do that.
19 That's not really all that relevant.

20 Q. Ms. Medine, again, you were deposed on
21 Saturday, correct?

22 A. Yes.

23 Q. Can you please turn to page 112, line 2,
24 of your testimony.

25 A. Yes.

1 Q. Now, as I am reading through that,
2 Attorney Chris Bzdok asked the question "Have you
3 reviewed any industry documents or filings by any of
4 these companies indicating a perceived increase in
5 the value of any of those assets on which they have
6 taken impairments in the last couple of years?" And
7 your response was "I have not done that analysis. I
8 would not guess that would have happened," correct?

9 A. Correct. I think that's pretty similar
10 to what I am saying today, but yes.

11 Q. Okay. Well, is Murray Energy a customer
12 of Dayton Power and Light?

13 A. As I answered, I have no idea.

14 Q. Okay. But you have no specific knowledge
15 that it is a customer?

16 A. I have no specific knowledge either way.

17 Q. Understood. And are you testifying about
18 the impairments of the stipulation on Murray Energy
19 as a consumer?

20 A. No. I believe I am testifying as to the
21 impact of the closure of the Killen and Stuart
22 plants.

23 Q. Okay. Does Murray Energy currently own
24 any of the generating assets at issue in this
25 stipulation?

1 A. Not to my knowledge.

2 Q. Okay. Do you know if Murray Energy has
3 offered to buy Killen and Stuart?

4 MR. SHARKEY: Your Honor, I am going to
5 object to that question.

6 MR. COLLIER: Objection.

7 MR. WANNIER: Your Honor, Murray
8 Energy --

9 MR. COLLIER: If we are going to have
10 argument on this issue, we need to go off the record.

11 EXAMINER PRICE: We will hear the grounds
12 for the objection from Mr. Collier first, Mr. Sharkey
13 second, and then we will get your response.

14 Mr. Collier.

15 MR. COLLIER: We need to discuss this in
16 camera, your Honor, with the Bench and Dayton Power
17 and Light. It's confidential, proprietary.

18 EXAMINER PRICE: Before we get into this,
19 why don't you try rephrasing your question in a less
20 objectionable manner and see how it goes.

21 MR. WANNIER: Your Honor, if I am being
22 honest, I don't know that I can, and my subsequent
23 questions are probably more objectionable. I'm happy
24 to respond to all objections as they come.

25 MR. COLLIER: Your Honor, we really need

1 to go into an in camera examination with attorney
2 examiners and DP&L present.

3 EXAMINER PRICE: And Sierra Club?

4 MR. MICHAEL: And Ohio Consumers'
5 Counsel?

6 EXAMINER PRICE: Okay. Hold on a second.

7 MR. COLLIER: I need to explain.

8 EXAMINER PRICE: I understand where we
9 are going so I'm just asking a question to
10 Mr. Sharkey. You're objecting too.

11 MR. SHARKEY: Yes, your Honor.

12 EXAMINER PRICE: Is anything you are
13 objecting to covered by the confidentiality
14 agreement, or is it not covered by the existing
15 confidentiality agreement?

16 MR. SHARKEY: It would be our position
17 that it would not be covered by the existing
18 confidentiality -- you are talking about the
19 confidentiality agreement among the parties? It
20 would be our position that it would not be and should
21 not be. DP&L's position, if you would like me to
22 hear -- if you would like to hear it.

23 EXAMINER PRICE: Well, first, I am trying
24 to get to the question of who can be allowed in the
25 in camera discussion here, and then we will get to

1 DP&L's position.

2 MR. SHARKEY: It would be our position
3 that nobody could be, your Honor, if there is to be
4 an in camera discussion, depending on the
5 circumstances.

6 EXAMINER PRICE: Okay. That's fine.
7 Let's go off the record.

8 (Recess taken.)

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

11 I have got a couple of questions for the
12 witness, and then we will go from there.

13 Ms. Medine, are you aware of any
14 regulatory obstacles to preclude Murray Energy from
15 buying these plants?

16 THE WITNESS: I'm not sure what you mean.
17 Beyond the standard regulatory obstacles or any?

18 EXAMINER PRICE: Any obstacles, anything
19 that prevents them from buying the plants.

20 THE WITNESS: Not my knowledge.

21 EXAMINER PRICE: Is there anything in the
22 stipulation that precludes any party from buying
23 these plants?

24 THE WITNESS: In the stipulation language
25 itself, not to my knowledge.

1 EXAMINER PRICE: Thank you. Let's move
2 on.

3 MR. WANNIER: Your Honor, can I respond
4 for a couple of points?

5 EXAMINER PRICE: You can.

6 MR. WANNIER: Okay. First, I would like
7 to state or acknowledge for the record that there was
8 an in camera meeting off the record that didn't
9 include all the parties to this proceeding. And --

10 EXAMINER PRICE: Yes, there was.

11 MR. WANNIER: Yes. And second --

12 EXAMINER PRICE: You want to be clear it
13 was the Bench, Murray Energy, and Dayton Power and
14 Light.

15 MR. WANNIER: Thank you, your Honor.
16 And, second, I would like to just point out or --
17 well, I haven't even heard of an actual objection,
18 but I'll just point out that Murray's interests in
19 this case are not clear, and if Murray Energy is a
20 potential buyer, then they're outside the scope of
21 interest protected by the ORC provisions that govern
22 this case. And if that's the case, then the
23 Commission should be aware of that in weighing Murray
24 Energy's and their witness's testimony.

25 EXAMINER PRICE: I appreciate that, and I

1 will just point out that the examiners have broad
2 discretion to control the testimony taken at this
3 hearing and there's no need to get into any potential
4 transactions between Dayton Power and Light and any
5 other party regarding any power plants at this time.
6 It has very limited bearing on the stipulation. As
7 the witness just acknowledged, there is nothing in
8 the stipulation which precludes Dayton Power and
9 Light from selling these plants to any party, and the
10 stipulation is the focus of this hearing.

11 MR. WANNIER: Okay. As long as the
12 Commission weighs Murray Energy's testimony
13 accordingly.

14 MR. MICHAEL: And I would just like to
15 say very briefly, your Honor, respectfully I would
16 obviously not dispute your Honor's discretion or the
17 Bench's discretion on what evidence it is taking.
18 However, I would object to the exclusion of parties
19 to discussions about potentially meaningful or
20 important issues involved in this.

21 I mean, you know, none of the parties,
22 opposing intervenors, were able to hear what Murray
23 Energy said, what Dayton Power and Light said, so
24 unfortunately the residential consumers of Dayton
25 Power and Light can't weigh in on whether or not your

1 Honor should hear it. So I obviously don't object to
2 your Honor's discretion, but I am just respectfully
3 saying I would object to the exclusion of parties to
4 the in camera meeting.

5 EXAMINER PRICE: I understand your
6 objection. It's noted for the record; but, you know,
7 it was important to understand the basis of their
8 request for an in camera proceeding to determine
9 whether or not you could participate. And they
10 persuaded me participation should be limited to the
11 two parties.

12 MR. WANNIER: Shall I continue?

13 EXAMINER PRICE: You may continue.

14 MR. WANNIER: Thank you.

15 Q. (By Mr. Wannier) Ms. Medine, can you
16 please turn to page 24 of your testimony.

17 A. Yes.

18 Q. Direct testimony. Do you see the chart
19 on the top of that page where you lay out the
20 capacity market dispatch curve in PJM?

21 A. Two comments, yes, I see that, and it was
22 replaced with an additional document.

23 Q. I apologize. Thank you. I had forgotten
24 that. We can turn to Exhibit 2A of your testimony.

25 A. Thank you.

1 EXAMINER PRICE: Ms. Medine, is there any
2 difference between this chart and Exhibit 2A other
3 than this is nicely in color now and I can read it?

4 THE WITNESS: Yes.

5 EXAMINER PRICE: There are differences.

6 THE WITNESS: Yes.

7 MR. WANNIER: I was going to get --
8 that's fine.

9 EXAMINER PRICE: So just ignore the chart
10 on page 24 of your testimony.

11 THE WITNESS: If you notice --

12 MR. WANNIER: If I can ask a question
13 first.

14 Q. (By Mr. Wannier) What are the differences
15 between the charts on page 24 of your prefiled
16 testimony and Exhibit 2A?

17 A. Unfortunately 2020 and 2025 were the same
18 in the testimony which I did not realize until we
19 were going through the production of the discovery
20 requests. And at that point I modified the discovery
21 request to be correct, and as I mentioned during the
22 deposition, I would be updating the chart.

23 Q. Yes. Understood and we appreciate that.
24 Thank you.

25 A. You're welcome.

1 Q. But there are no other differences other
2 than the fact that the 2025 is updated and it looks
3 like the presentation has been slightly altered?

4 A. Slightly altered.

5 Q. Okay. And no other changes.

6 A. Not to my knowledge.

7 Q. Thank you. Okay. So let's look at the
8 two charts on Exhibit 2A then.

9 A. Thank you.

10 Q. Ms. Medine, you have not yourself tried
11 to quantify what the increase in power prices might
12 be from closure of Killen or Stuart, right?

13 A. No. My point is when you remove 3,000
14 megawatts of capacity from the lower economic part of
15 the curve, it will increase your power price, but I
16 have not done the quantification.

17 Q. Okay. And you also have not done any
18 work that would enable you to qualitatively
19 characterize those price changes as large or small,
20 correct?

21 A. No. The only qualitative analysis I have
22 done is price changes would be positive.

23 Q. Okay. But you don't -- you would not be
24 able to testify -- you are not testifying today that
25 they would be large or small.

1 A. No. They are positive. That's all I am
2 testifying to. It will increase the price of power.

3 Q. Okay. So let's look at this chart. How
4 would you go about estimating using this chart, the
5 increase in power prices that might result?

6 A. I wouldn't use this chart to estimate the
7 increase in power prices.

8 Q. But you could approximate it, right?

9 A. Maybe, but I think because this is sort
10 of an annual average number, in fact, power prices
11 vary from, you know, by season, by day, by hour, so
12 to get a closer approximation, I would actually use
13 the outputs of the model which would provide that
14 information.

15 Q. Okay. But looking at this chart at least
16 which you state represents the average demand and --
17 and provides a dispatch curve of the supply in PJM,
18 do you see in this Exhibit 2A where there is this red
19 box that says "2020 Average Demand" --

20 A. Yes, I do.

21 Q. -- in the first chart? And you see that
22 it intersects at it looks like approximately 37,000
23 megawatts?

24 A. I can't read this either; but, yes, I'll
25 accept that.

1 Q. Well, it's your exhibit so I will ask you
2 to read it as best you can.

3 A. It's a number.

4 Q. Yeah. Well, I will represent it
5 intersects around 37,000.

6 A. I accept your representation.

7 Q. Thank you.

8 EXAMINER PRICE: Isn't that the number in
9 the box? Am I reading this wrong?

10 THE WITNESS: Could be.

11 MR. WANNIER: Sorry. Apologies, your
12 Honor, it, in fact, says 36,773.

13 A. Yes.

14 Q. Now, the combined capacity of Stuart and
15 Killen is approximately 3,000 megawatts, right?

16 A. Correct.

17 Q. Okay. And they -- in this curve that you
18 have provided, they are -- they are offering the
19 entirety of that 3,000 megawatts into this dispatch
20 curve, correct?

21 A. So let me try to explain again what a
22 dispatch curve is. It doesn't say what they are
23 offering them in at. This is what their costs are
24 per megawatt-hour.

25 Q. Okay. Thank you for that clarification.

1 I may have used imprecise phrasing, but I think we
2 are in agreement on what -- the question was whether
3 the entirety of the 3,000 megawatts is represented in
4 this curve.

5 A. Yes.

6 Q. Okay. Thank you. Would you agree that
7 removing -- and you would agree that all of the units
8 at Stuart and Killen are to the left of the red
9 dotted line that represents average demand, right?

10 A. Yes.

11 Q. Okay. Now, would you agree that removing
12 3,000 megawatts from the left of this red dotted line
13 would allow -- were you to try to calculate the
14 impact of that, you could simply move the red dotted
15 line 3,000 megawatts to the right along the dispatch
16 curve?

17 A. Yes. But, again, I am not sure that
18 would give you a good estimate of the impact on the
19 power price, yes. Yes, it moves it to the right.

20 Q. By 3,000 -- by that amount.

21 A. Correct. You are contracting the supply
22 curve, so you are moving your average to the right,
23 correct, to a higher price area.

24 Q. So based on average demand -- actually I
25 am not seeing a Y axis on these charts.

1 A. Correct.

2 Q. But based on the average demand, if you
3 move the line -- the red line 3,000 megawatts to the
4 right, you would be -- the price increase for the
5 average demand would be represented by the new
6 intersection 3,000 megawatts to the right.

7 A. Correct.

8 Q. Thank you. DP&L is only responsible for
9 prices for customers in its service territory, right?

10 A. DP&L -- I don't know if "responsible" is
11 the correct word but.

12 Q. But you would agree that their obligation
13 to provide safe and reliable service and their
14 consideration of -- or their obligation to reduce
15 costs for their consumers only extends to their
16 service area.

17 A. Their concern is their customers,
18 correct.

19 Q. Okay. Perfect. Ms. Medine, do you
20 believe the gas prices will go up in the next 5 to 15
21 years?

22 A. Yes.

23 Q. What's your basis for that belief?

24 A. Detailed supply analysis.

25 Q. And that was a report conducted by EVA,

1 correct?

2 A. That's not a report. It's part of our
3 daily business to do analysis of the gas industry.

4 Q. Okay. Do you conduct the analysis that
5 goes into those reports?

6 A. For gas? For gas?

7 Q. Yes.

8 A. No.

9 Q. And you -- and you don't believe that any
10 regulatory developments will increase gas prices,
11 right?

12 A. Correct.

13 Q. In fact, regulatory developments may make
14 it easier to produce gas.

15 A. So while I don't think new regulatory
16 developments will continue to be regulatory costs for
17 gas production as there are regulatory costs for coal
18 production. I don't think we are entering an era of
19 freedom from all regulations, so there will continue
20 to be regulatory costs.

21 Q. But you believe those regulatory costs
22 will go down --

23 A. For gas?

24 Q. Yes.

25 A. To my knowledge they are not that

1 significant, so it was more of a concern about an
2 increase than a reduction.

3 Q. Okay. Now, can you please turn to
4 page 18 of your testimony. And that's line 10.

5 A. Yes.

6 Q. So you discuss in this paragraph the
7 February 2016 filing for an ESP with a reliable
8 electricity rider, correct?

9 A. I'm sorry? For the electric service
10 plan?

11 Q. With a reliable electricity rider.

12 A. Yes.

13 Q. Are you aware this filing has been
14 withdrawn?

15 MR. COLLIER: Objection. Could I, first
16 of all, get a reference to the page?

17 MR. WANNIER: Yeah. Again, that is
18 page 18, line 10, and really that entire paragraph is
19 discussing this.

20 EXAMINER PRICE: Grounds for your
21 objection?

22 MR. COLLIER: Assumes facts not in
23 evidence.

24 MR. WANNIER: Can I get a clarification
25 on that objection?

1 MR. COLLIER: The basis of the question
2 was to assume something that is not in evidence.

3 MR. WANNIER: I am simply asking --

4 EXAMINER PRICE: Which factors is he
5 assuming is not in evidence?

6 MR. COLLIER: That the ESP has been
7 withdrawn as opposed to the reliable electricity
8 rider.

9 EXAMINER PRICE: Mr. Sharkey, you can
10 solve this conundrum for us.

11 MR. SHARKEY: Yes, your Honor. The
12 Dayton Power and Light Company filed a notice of
13 withdrawal of its proposal for a reliable electricity
14 rider sometime before it filed its DMR application.
15 So I don't have the precise date in front of me.

16 EXAMINER PRICE: Is that notice in the
17 docket in the record of this case?

18 MR. SHARKEY: There is something in the
19 docket in this case formally requesting the reliable
20 electricity rider be withdrawn.

21 EXAMINER PRICE: Objection is overruled.
22 You can answer if you know.

23 A. I think there's no dispute that on
24 February 22, which is what this sentence says, this
25 ESP was filed and that's my only point there.

1 Q. Okay. So you were not aware that it was
2 withdrawn.

3 A. Well, there was a filing. The act of
4 withdrawal doesn't necessarily remove the filing
5 itself. The filing continues to be there, and in the
6 filing the company represented the items that I talk
7 to in terms of the fact that coal was an integral
8 part of their future and that's simply the point. So
9 either -- assuming the company was honest in its
10 filing that's the entire point of that reference.

11 Q. Okay. So I will just --

12 MR. WANNIER: Can I have that answer read
13 back and the question?

14 EXAMINER PRICE: Let's have the question
15 and answer back, please.

16 (Record read.)

17 MR. WANNIER: Your Honor, I am going to
18 move that as nonresponsive to the question. I was
19 not asking if there was a February 2016 filing.

20 EXAMINER PRICE: I am going to deny the
21 motion to strike, but if you would like to narrow the
22 question a bit, she will answer it in a more brief
23 and perhaps "yes" or "no" fashion.

24 Q. (By Mr. Wannier) Were you aware that a
25 withdrawal was filed on September 23, 2016,

1 purporting to withdraw the February -- the February
2 2016 filing?

3 MR. COLLIER: Objection. That's a fact
4 not in evidence, your Honor.

5 MR. WANNIER: I thought --

6 MR. COLLIER: You have the filing. We
7 have the filing. It is what it purports to be. It's
8 not as he characterized it.

9 EXAMINER PRICE: Mr. Sharkey, would you
10 care to respond?

11 MR. SHARKEY: Your Honor, the ever
12 helpful Chris Hollon has the exact language pulled up
13 on the computer screen, and the notice was -- states
14 that Dayton Power and Light Company provides notice
15 of withdrawal of its request in this case for a
16 reliable electricity rider. DP&L will continue to
17 pursue an alternative to the RER which has been named
18 the distribution modernization rider. And hold on a
19 second. I will get you a date. The date was
20 September 23, 2016.

21 EXAMINER PRICE: Counsel?

22 MR. COLLIER: Yeah. There is no dispute
23 they withdrew the reliability -- reliable electricity
24 rider is in the docket. The document also says they
25 didn't withdraw the ESP, the filing of an ESP. They

1 have amended it now substantially in the stipulation,
2 but they went on to state in addition to supporting
3 and explaining DP&L's DMR, DP&L will be filing
4 replacement direct testimony. DP&L's proposed ESP
5 still retains the key components of the benefit for
6 its customers.

7 EXAMINER PRICE: Okay.

8 MR. COLLIER: So that wasn't withdrawn.

9 EXAMINER PRICE: Let's try to cut through
10 this. Were you aware on September 23 Dayton Power
11 and Light withdrew the proposal for the reliable
12 electricity rider?

13 THE WITNESS: Yes.

14 EXAMINER PRICE: Thank you.

15 MR. WANNIER: Thank you, your Honor.

16 EXAMINER PRICE: Fix your mic.

17 Q. (By Mr. Wannier) Can you please turn to
18 page 22 of your testimony.

19 A. Yes.

20 Q. And specifically if you can look at
21 line 8. You're testifying here, correct, that "DP&L
22 has the burden of showing that closure of Killen and
23 Stuart is a better outcome for consumers than a
24 sale," correct?

25 A. That's my belief, yes.

1 Q. And, in fact, you have stated that you
2 believe the February 2016 ESP filing creates that
3 burden, correct?

4 A. Not in and of itself, no.

5 Q. You don't believe that the --

6 A. I said particularly given, not
7 exclusively given.

8 Q. Okay. So you believe that obligation
9 would exist even if there had not been a February
10 2016 ESP filing.

11 A. Correct.

12 Q. What's the basis for your belief that
13 that burden exists?

14 A. The basis for the belief goes back to
15 some of the legal challenges to the proceeding, but
16 the basis of the belief is that --

17 Q. Sorry, if I can rephrase. Are there any
18 nonlegal basis -- bases for your -- I'm sorry to
19 interrupt. I will allow you to finish. I apologize.

20 A. Such that -- that there is a record that
21 I've presented that when the -- when requested for
22 the divestiture, either through a sale or a transfer,
23 that the Commission has the right, if not the
24 obligation, to show that it's in the public interest.
25 I'm sorry. And to complete the thought is that given

1 that the major change which is the expectation due to
2 announcements on the part of DP&L witnesses, DP&L,
3 DPL filing with PJM, et cetera, that there's a plan
4 to close the plant, I feel it's an obligation on the
5 company to show it's in the public interest for the
6 plant to be closed and that the Commission still has
7 the authority to do that.

8 MR. WANNIER: Your Honor, I am going to
9 move to strike that entire response for the same
10 reasons that I felt my motion to strike the legal
11 portions of her testimony. I am happy to rephrase
12 the question in a way that excludes that testimony.

13 EXAMINER PRICE: Let's strike the answer
14 and go ahead and rephrase your question in a manner
15 that doesn't lend itself toward legal conclusions.

16 MR. WANNIER: Thank you, your Honor.

17 Q. (By Mr. Wannier) Ms. Medine, are there
18 any nonlegal bases for your belief that DP&L has this
19 burden?

20 A. Yes. I believe that the purpose of the
21 divestiture of generation proffers competitive
22 generation market, and I think that the Commission
23 should be aware of the fact and the company should
24 demonstrate that this is in the public -- selling or
25 closing the plant is not or is in the public

1 interest.

2 Q. So, to be clear, the basis is your
3 personal belief as to what you think DP&L and the
4 Commission should do, correct?

5 A. The basis of my belief is what I think is
6 in the public interest, yes.

7 Q. Okay. Thank you.

8 MR. WANNIER: Your Honor, may I request a
9 15-minute recess? I need to revisit some questions
10 in light of previous motions to strike. Or 10.

11 EXAMINER PRICE: Try to keep it to 10.
12 Let's break for 10 minutes. Thank you.

13 We're off the record.

14 (Discussion off the record.)

15 EXAMINER PRICE: Let's go back on the
16 record.

17 Please proceed.

18 MR. WANNIER: Thank you, your Honor.

19 Q. (By Mr. Wannier) Ms. Medine, you
20 mentioned this idea that -- sorry. I'll strike that.

21 You mentioned a public interest
22 requirement before we went on break, right?

23 A. Yes.

24 Q. Can you please turn to Appendix B of your
25 testimony. Now, with the understanding that you are

1 not an attorney and we have moved to strike portions
2 of your testimony, my question is simply: Is your
3 statement about the public interest based in any way
4 on your understanding of Appendix B?

5 A. In part.

6 Q. Okay. Can you please state what in
7 Appendix -- and I will just say for the record that
8 Appendix B is an excerpt of Ohio Statute 4928.17,
9 corporate separation plans.

10 A. Again, I think it speaks for itself, but
11 I think clearly provisions of A, B, and C relate to
12 that. My focus on that section of the Code derived
13 from the order issued by the Commission that
14 specifically referred to the fact that they felt at
15 that time the divestment of the company generation
16 into a -- an unregulated affiliate was in the public
17 interest pursuant to that provision.

18 MR. COLLIER: Ms. Medine, could you press
19 your microphone.

20 THE WITNESS: Sorry.

21 EXAMINER PRICE: That's the order where
22 the Commission granted Dayton the authority to
23 transfer its generation assets.

24 THE WITNESS: Correct.

25 EXAMINER PRICE: And that order was not

1 appealed.

2 THE WITNESS: I believe it was -- I can't
3 tell you specifically. I think there were appeals
4 along the way. I think that provision came out of
5 the appeals. It's referenced on page --

6 EXAMINER PRICE: I am not saying we
7 didn't have rehearings. I am saying that is a final
8 nonappealable order; is that correct?

9 THE WITNESS: I am not 100 percent
10 certain of that.

11 EXAMINER PRICE: Is there any reason to
12 believe that order is not in effect today?

13 THE WITNESS: I believe that the order is
14 in effect today except that it was extended to
15 May 31, and since that transfer can't occur by then,
16 I think that's what reopens it.

17 EXAMINER PRICE: You make some -- I am
18 going to interrupt you.

19 MR. WANNIER: Yes.

20 EXAMINER PRICE: You make some comments,
21 while we are on this section in your testimony, let's
22 start on page -- you make some comments regarding
23 Senate Bill 221. Page 6, line 3, you talk about the
24 objective of Senate Bill 221's requirement for
25 utilities to divest their generation; is that

1 correct?

2 THE WITNESS: That was my understanding,
3 yes.

4 EXAMINER PRICE: Your understanding is
5 Sebate Bill 221 requires a utility to divest their
6 generation.

7 THE WITNESS: I believe there is an
8 obligation related to Senate Bill 221 where
9 specifically in it, I can't cite you a place, but
10 that was my understanding of the purpose of Senate
11 Bill 221.

12 EXAMINER PRICE: Here is a copy. Could
13 you read the first two lines. They are in parens.
14 First page, top.

15 THE WITNESS: You mean to amend sections?

16 EXAMINER PRICE: Above in the parens.
17 Read them out loud, very top.

18 THE WITNESS: You are doing this
19 deliberately. I can't read the numbers, but it says
20 before General Assembly, and then the second one says
21 Amended Substitute Senate Bill No. 221.

22 EXAMINER PRICE: Sure. Now, show me in
23 221 where this is an obligation for utilities to
24 divest the generation assets.

25 THE WITNESS: I would not want to take

1 the time.

2 EXAMINER PRICE: I have time.

3 THE WITNESS: I don't. I mean, I have
4 time obviously, but I am not going to be able to get
5 to that. It was my understanding and it was in a
6 number of the documents that I, A, produced and, B,
7 read through the years that spoke to the divestment
8 obligation, that the intent was to provide -- I
9 cannot.

10 EXAMINER PRICE: You refer to in your
11 testimony to Senate Bill 221, so I want you to show
12 me where that obligation was.

13 THE WITNESS: As I said, I can't cite you
14 the chapter and verse. It was part of the general
15 production at the time that by divesting of
16 generation, that would improve the competitive market
17 for power.

18 EXAMINER PRICE: So you have no basis for
19 your statement that 221 requires --

20 THE WITNESS: I have some basis. I
21 cannot cite you.

22 EXAMINER PRICE: We have time for you to
23 look in the bill.

24 THE WITNESS: I will defer. If you say
25 it's not here, it's not here.

1 EXAMINER PRICE: I am not testifying
2 today.

3 THE WITNESS: I cannot find it. It would
4 be a lengthy break for me to do it, and I don't
5 specifically know where to identify that.

6 EXAMINER PRICE: Okay. That's fine.
7 We'll leave it at that.

8 Please proceed.

9 Q. (By Mr. Wannier) Well, I won't ask any
10 questions about that anyway. Can you turn back to
11 Appendix B.

12 A. Yes.

13 Q. Do you see Section A2 of Appendix B where
14 it says in relation -- or in regard to corporate
15 separation plans that there is a requirement that as
16 "The plan satisfies the public interest in preventing
17 unfair competitive advantage and preventing the abuse
18 of market power"?

19 A. Yes. Yes.

20 Q. Now, when that line mentions "public
21 interest," especially in relation to these two
22 specific comments, right?

23 A. Yes.

24 Q. Okay. So we will take those harms one by
25 one. What about closing Killen or Stuart would lead

1 to an unfair competitive advantage?

2 A. As I mentioned on Saturday, the issue
3 relates to the fact that the merchant generators were
4 looking to reduce capacity operating in the region in
5 order to reduce costs. And the two merchant
6 generators that you mentioned in closing the plant
7 are Dynegy and AEP Generation Resources.

8 Q. But do you have any basis for your claim
9 that Dynegy and AEP are motivated by in this closure
10 decision by desire to increase capacity prices?

11 A. Other than common business sense? Do I
12 have an actual document?

13 Q. Do you have any actual knowledge of that?

14 A. Common business sense.

15 Q. Okay. And do you have any evidence you
16 can point us to that AES or DPL Inc. or DP&L were
17 seeking or that one of their -- that their objective
18 in seeking to close Killen or Stuart was to increase
19 capacity prices?

20 A. No. I don't believe I said that. I
21 think there is interest basically -- the interest in
22 is getting approval of the ESP. And to the extent
23 that included the closing of those plants, that was a
24 price they were willing to pay.

25 MR. WANNIER: Okay. I am going to move

1 to strike that last sentence, your Honor.

2 EXAMINER PRICE: Let's have the question
3 and answer back in their entirety, please.

4 (Record read.)

5 EXAMINER PRICE: Wait a second. I
6 thought we agreed earlier that the amended
7 stipulation had no provisions to close Stuart and
8 Killen.

9 THE WITNESS: I think there is
10 significant collateral evidence to the contrary. The
11 actual amendment, per se, doesn't say that.

12 EXAMINER PRICE: Anywhere in the ESP
13 saying they are committing to close Stuart and
14 Killen?

15 THE WITNESS: In the ESP, no, because
16 they were saying at that point how great they were
17 and important to the financial -- the --

18 EXAMINER PRICE: In the most recent
19 amended application of their ESP, do they represent
20 they are going to close Stuart or Killen?

21 THE WITNESS: No. As I said, the
22 evidence in the ESP application lies with the
23 testimony of Expert Malinak which specifically states
24 that he's been told that the company plans to close
25 those plants.

1 EXAMINER PRICE: I am just asking are
2 they -- are they making -- seeking Commission
3 approval or authorization to close Stuart and Killen
4 in the ESP?

5 THE WITNESS: I don't think they need to
6 ask the company -- the Commission.

7 EXAMINER PRICE: How is it part of their
8 ESP if they are not seeking Commission approval to do
9 it?

10 THE WITNESS: It's a consequence of their
11 ESP.

12 EXAMINER PRICE: It's a consequence of
13 their ESP, but it's not part of the ESP.

14 THE WITNESS: It is indirectly part of
15 the ESP because there's components of the ESP
16 application that represent closure of those units.
17 It may not be in the stipulation per se, but to the
18 extent that the company has offered Witness Malinak's
19 testimony, he says a couple of times in his testimony
20 that these plants will be closed.

21 EXAMINER PRICE: Fair enough.

22 MR. WANNIER: I am going to renew my
23 motion to strike as nonresponsive. It wasn't
24 responsive to the question, your Honor.

25 EXAMINER PRICE: Denied. If you can

1 restate your question and get a better answer.

2 Q. (By Mr. Wannier) You don't recall that
3 AES is -- or DPL Inc. or DP&L's motivation is to --
4 in closing the plants was to increase capacity
5 prices, correct?

6 A. I believe they were indifferent to the
7 consequence of higher prices.

8 Q. Thank you. And do you have any evidence
9 to demonstrate that DPL Inc. or DP&L or AES were
10 seeking to secure an unfair competitive advantage in
11 closing Killen and Stuart -- or Stuart?

12 A. Obviously that depends on what you
13 exactly mean, but obviously their intent was to get
14 approval of the ESP. And to the extent that that
15 resulted in an unfair competitive advantage, I would
16 argue that that's possible.

17 Q. Do you believe that approval of the ESP
18 would offer DPL Inc. and DP&L an unfair competitive
19 advantage?

20 A. Well, unfair in that it's providing
21 compensation for costs that are not necessarily
22 properly allocated to customers, yes.

23 Q. Okay. And what about closure, is there
24 anything about the closure of these two plants that
25 would enable an abuse of market power by DPL Inc. or

1 DP&L?

2 A. Since they are basically divesting
3 themselves of their generation at this point, it
4 would not. If their affiliate Ohio AES Generation
5 were to subsequently build new generation, yes, it
6 would.

7 MR. COLLIER: Breaking up again with the
8 microphone.

9 EXAMINER PRICE: Try to ignore it and not
10 speak into it is the only advice I can give you. Try
11 to line it up with counsel too and it will work a
12 little better.

13 MR. McNAMEE: It's a directional
14 microphone so.

15 THE WITNESS: Okay.

16 Q. It's fine. I am also having issues with
17 it.

18 MR. WANNIER: Apologies. Could we have
19 that last response read back?

20 EXAMINER PRICE: Can we have the previous
21 question and answer, please.

22 (Record read.)

23 Q. Do you have any evidence that part of the
24 motivation of the DPL/AES family, any of the three
25 corporate entities, in closing Killen or Stuart was

1 to enable the abuse of market power?

2 A. No, no. As I said earlier, the only
3 evidence I have with respect to DP&L is their desire
4 to get approval of the ESP.

5 Q. Okay. Thank you. Can you please turn to
6 page 31 of your direct testimony.

7 A. Yes.

8 Q. And here if you can turn to lines 17 to
9 20.

10 A. Yes.

11 Q. Do you see in -- in the testimony where
12 you -- in this paragraph you are testifying as to
13 the -- as to potential buyers for Killen and Stuart,
14 correct?

15 A. The categories of potential buyers.

16 Q. And there are three categories: Private
17 equity, merchant generators, and strategic players,
18 right?

19 A. Yes.

20 Q. Now, as an example of a potential private
21 equity buyer, you've provided us the example of the
22 sale of the Gavin power plant, right?

23 A. Yes.

24 Q. But Gavin was not just a coal
25 transaction, right?

1 A. Correct.

2 Q. In fact, it included combined cycle
3 gas -- it included combined cycle gas assets.

4 A. Correct.

5 Q. And you don't actually know what portion
6 of the Gavin sale related to the actual coal assets,
7 right?

8 A. Yes and no. Well, we saw the value. We
9 did the analysis and concluded about \$200 a kilowatt
10 was paid for Gavin.

11 Q. When -- when did you -- did you have that
12 information when you filed your direct testimony?

13 A. Yes.

14 Q. If I can please refer you back to the
15 deposition you took on Saturday.

16 A. Sure.

17 Q. If you can turn to page 111, line 21.
18 Ms. Medine, is it correct that in reading from this
19 transcript that you were asked, and I am going to
20 quote, "So sitting here today, you don't know what
21 role the coal gen played in that purchase price,"
22 which I'll represent to be the Gavin sale, "that you
23 state," and you answered "Correct."

24 MR. COLLIER: I'm not sure that's an
25 accurate representation. I would ask you to read the

1 question above it as to what was being discussed
2 there.

3 Q. Okay. We can read the whole page.

4 MR. COLLIER: No. You don't need to read
5 the whole page. Refer me to where --

6 EXAMINER PRICE: No. 1, counsel will
7 direct their comments to the Bench, not to each
8 other.

9 MR. COLLIER: Sorry, your Honor.

10 EXAMINER PRICE: No problem.

11 MR. COLLIER: I am not sure it's
12 established --

13 MR. WANNIER: Your Honor, I can get at
14 this another way. That might resolve the objection.

15 EXAMINER PRICE: Okay. That's fine.

16 Q. (By Mr. Wannier) Ms. Medine, do you see
17 that question on line 21?

18 A. I do.

19 Q. Now, when -- on line 22, the second line
20 of that question, when you were asked "what role the
21 coal gen played in that purchase price that you
22 state," is it your understanding that you were
23 discussing the Gavin sale at that time?

24 A. Yeah. I'm just -- I'm surprised because
25 I thought we had talked about \$200. That's why I am

1 wondering if it's elsewhere in this document.

2 Subject to check, I'll defer to you, but I recall
3 mentioning that.

4 Q. Murray Energy's counsel --

5 EXAMINER PRICE: Wait a second. This is
6 from your deposition, right?

7 THE WITNESS: Correct.

8 EXAMINER PRICE: Swore to tell the truth,
9 correct?

10 THE WITNESS: Absolutely.

11 EXAMINER PRICE: Okay. So am I reading
12 this correctly, line 25, "And you couldn't even
13 estimate it," and the answer --

14 THE WITNESS: No.

15 EXAMINER PRICE: Let me finish. "Not off
16 the top of my head. And please note the typo in that
17 last sentence. It had should be 2015." That was
18 your testimony on Saturday.

19 THE WITNESS: My recollection is earlier
20 in the testimony I mentioned the \$200, but I would
21 defer. If I didn't, it was hour four, and it's
22 possible I said that.

23 EXAMINER PRICE: First answer my
24 question.

25 THE WITNESS: That was my testimony, yes.

1 EXAMINER PRICE: So if your counsel has
2 follow-up on this, I am sure we will do that in
3 redirect.

4 MR. COLLIER: We will go right to page 90
5 of your deposition.

6 EXAMINER PRICE: That will work and
7 that's fine.

8 MR. WANNIER: I'll move on.

9 Q. (By Mr. Wannier) Turning back to page 31
10 of your direct testimony.

11 A. Yes. I'm sorry. I found it in here so
12 if you want to --

13 EXAMINER PRICE: It's a matter for
14 redirect.

15 THE WITNESS: Sorry, sorry.

16 Q. Turning back to page 31, you also cite
17 the example of the sale of the Duke Energy Ohio
18 plants on line 18, correct --

19 A. Yes.

20 Q. -- as an example of merchant generators?

21 A. Yes.

22 Q. Yes. That sale included non-coal assets,
23 correct?

24 A. Yes.

25 Q. And you did not do an analysis of what

1 role the coal generation played in determining that
2 purchase price, correct?

3 A. Correct.

4 Q. Nor could you even estimate it.

5 A. I did not say that.

6 Q. Okay. One moment.

7 EXAMINER PRICE: Without referencing your
8 deposition, because he is going to do that, can you
9 just answer the question can you estimate the role
10 coal played?

11 THE WITNESS: Yes.

12 EXAMINER PRICE: You can. Thank you.

13 Q. You couldn't -- you couldn't estimate it
14 off the top of your head, right?

15 A. Correct.

16 Q. Do you have that number today?

17 A. No.

18 Q. Have you provided that number in any of
19 your testimony?

20 A. No.

21 Q. Okay. That's fine. Thank you.

22 Ms. Medine, can you give any other examples, without
23 violating proprietary or confidential information, of
24 potential buyers of this Stuart and Killen plants?

25 A. What do you mean "buyers"? You mean

1 names or do you mean pricing?

2 Q. I don't mean pricing. I mean entities
3 that would --

4 A. So Riverstone bought Talen Energy in
5 2016. I don't have the total purchase price, but it
6 included all of PP&L coal plants as well as some gas
7 plants, so it's another part -- large party that is
8 actively participating in the market. Other sales --

9 Q. Sorry. Can I --

10 EXAMINER PRICE: Let her finish, please.

11 Q. Sorry, sorry.

12 A. Other sales that are going on is
13 Eversource which is the former Northeast Utilities is
14 currently auctioning off all of its assets in New
15 Hampshire being directed by the Public Service
16 Commission through an RFP process where they actually
17 require that they engage a financial adviser to do
18 the sale process. And those assets include two
19 coal-fired power plants, Schiller and Merrimack.

20 MR. WANNIER: Okay. So could we take a
21 quick 5-minute break, your Honor? I apologize.

22 EXAMINER PRICE: Yes. Let's go off the
23 record.

24 (Recess taken.)

25 EXAMINER PRICE: Let's go back on the

1 record.

2 MR. WANNIER: We have no further
3 questions at this time. Thank you.

4 EXAMINER PRICE: Thank you.
5 OMAEG?

6 MS. BOJKO: Oh, no. Thank you, your
7 Honor.

8 EXAMINER PRICE: Kroger?

9 MS. WHITFIELD: No. Thank you, your
10 Honor.

11 EXAMINER PRICE: Mr. Lesser?

12 MR. LESSER: No. Thank you.

13 EXAMINER PRICE: Mr. Sharkey?

14 MR. SHARKEY: Yes, your Honor, briefly.

15 - - -

16 CROSS-EXAMINATION

17 By Mr. Sharkey:

18 Q. Ms. Medine, you are familiar with the
19 fact that the Commission uses a three-part test to
20 evaluate stipulations, right?

21 A. Yes.

22 Q. And it's true, isn't it, that you do not
23 dispute whether or not the stipulation in this case
24 satisfies that three-part test?

25 A. Correct.

1 Q. It's also true, isn't it, that you know
2 that the stipulation contains various riders?

3 A. Yes.

4 Q. And you do not oppose DP&L's collection
5 of any revenues under any of those riders, right?

6 A. I don't have any opinion on any of the
7 riders.

8 Q. It's true, isn't it, that there is
9 nothing in the stipulation that discusses plant
10 closure?

11 A. Again, there is nothing in the four
12 corners of the agreement, but there is -- there is
13 information in the record that does speak to plant
14 closure.

15 Q. There's nothing in the stipulation that
16 would require plant closure if the stipulation is
17 approved, right?

18 A. Correct. Again, there's ample
19 information in the actual docket that do -- does
20 discuss plant closure.

21 Q. Finally, there's nothing in the
22 stipulation that would preclude DP&L from selling
23 Stuart and Killen to a third party, correct?

24 A. Nothing in the four corners of the
25 agreement, correct.

1 MR. SHARKEY: Thank you, your Honors. No
2 further questions.

3 EXAMINER PRICE: Thank you.

4 Mr. McNamee?

5 MR. McNAMEE: No questions, thank you.

6 EXAMINER PRICE: Redirect?

7 MR. COLLIER: Thank you, your Honor.

8 - - -

9 REDIRECT EXAMINATION

10 By Mr. Collier:

11 Q. Ms. Medine, I would like to turn your
12 attention to your direct testimony, page 7. Are you
13 with me? Point 24 and 25, you address the sale
14 process and what your recommendations are, right?

15 A. Yes, I do.

16 Q. And, in summary, what is your
17 recommendation to the Commission regarding Killen and
18 Stuart and the sale process that's stipulated in the
19 stipulation?

20 A. I would recommend that the stipulation be
21 modified to include a bona fide sale process for all
22 of the Ohio generation.

23 Q. What do you mean by "bona fide sale
24 process"?

25 A. That it's a -- an effort that's conducted

1 with the intent of selling.

2 Q. Regarding Mr. Sharkey's last question or
3 recent questions concerning plant closure, you were
4 here for the testimony of Mr. Malinak?

5 A. Yes, I was.

6 Q. And does he not address quantifiable and
7 nonquantifiable benefits and costs of closure of the
8 two plants?

9 A. Yes.

10 Q. All right. I guess I should just work
11 backwards. You were asked a question about your
12 deposition. I would turn your attention to page 90
13 of your deposition.

14 A. Yes.

15 Q. You address there the \$200 to
16 determine -- was ascribed to the Killen -- or the
17 Gavin plant.

18 A. Yes.

19 Q. And that was \$200 per megawatt related to
20 coal generation.

21 A. \$200 a kilowatt, yes.

22 Q. All right. In summary at this point,
23 Ms. Medine, do you see any justification for not
24 including Stuart and Killen in a sale process?

25 A. I see no justification. The only

1 justification that's been provided is that there has
2 been a negative cash flow, but the reality is that's
3 not how third parties would value that plant. A
4 third party would typically value that plant based
5 upon their own synergistic, their own assumptions
6 with respect to regulation, with respect to the price
7 they can buy their coal for, with respect to the
8 power market. So as far as I'm concerned, for a
9 company that's looking to add value, simply closing
10 them without testing the market to see what somebody
11 would pay is not a prudent strategy.

12 Q. All right. And I am going to ask that
13 question. You were asked a series of questions about
14 whether you had value to the Killen and Stuart
15 station. Do you recall that?

16 A. Yes.

17 Q. And you indicated it was irrelevant.

18 A. Correct.

19 Q. Why?

20 A. Well, it's irrelevant because ultimately
21 what determines what the value is is what somebody is
22 willing to pay for it. So when there are a number of
23 different ways people look at assets, one is looking
24 at cash flow and doing a discounted cash flow
25 analysis. Another is looking at comparable

1 transactions and see what the market is paying for
2 coal generation, what other parties are willing to
3 pay.

4 But most importantly it's your own set of
5 assumptions and analysis related to what you think
6 the outlook is for coal generation both from a
7 regulatory perspective as well as from a fuel
8 perspective as well as from a power market. So each
9 individual player has different opinions on that
10 subject, and so you cannot with any certainty come up
11 with a value based upon your own analysis of negative
12 cash flow.

13 Q. Can you come up with any certainty as to
14 value until there is a sale price?

15 A. You cannot come up with any certainty.
16 You can probably look at comparable transactions to
17 get an idea as to what the range is, of which Gavin
18 is one. But there are other comparable transactions
19 and so you get a sense as to what the market price
20 is, but you cannot, with any certainty, estimate
21 internally what you think somebody would bid for the
22 plant.

23 Q. In a sale price process would it be
24 important to know exactly what generation assets are
25 being put up for sale?

1 A. Certainly. Everybody has a unique --
2 each plant is somewhat different, so their quality
3 requirements, regulatory requirements, et cetera, but
4 obviously you would need to know what plant is being
5 sold.

6 Q. And would it be relevant to a bona fide
7 sale price for the buyer to know what liabilities
8 would track the assets?

9 A. Absolutely.

10 Q. Including environmental liabilities?

11 A. Absolutely.

12 Q. Including debt?

13 A. Presuming that -- unless you explicitly
14 acquire debt such as what AES did when it acquired
15 DP&L, you would not be acquiring debt, but if it
16 was -- in bankruptcy, for example, you would simply
17 be acquiring the hard asset.

18 Q. Do you understand that the debt will
19 retain with Dayton Power and Light, all debt?

20 A. The stipulation I believe speaks to
21 non-debt liabilities transferring with the asset but
22 the debt staying with DP&L.

23 Q. And --

24 A. Or DPL.

25 Q. And you understand the stipulation will

1 provide that any sale proceeds will be ascribed to
2 pay off discretionary debt.

3 A. Again, the way it's written today, it
4 would be the sale proceeds related to Conesville,
5 Zimmer, and Miami Fort 7 and 8.

6 Q. Could that apply equally to Killen and
7 Stuart?

8 A. It certainly could if that was part of
9 the deal.

10 Q. You were asked about the capacity factor
11 for Stuart.

12 A. Yes.

13 Q. Could you -- could you address the
14 capacity factor for Killen in recent years.

15 A. The capacity factor for Killen has been,
16 you know, fairly good. I don't know what the exact
17 average is, but I think in one recent year was over
18 70 percent. It's a very good plant. It's relatively
19 new. It has a lot of fuel flexibilities. It's only
20 located 15 barge miles from Stuart, so it's a very,
21 very good plant.

22 Q. And what relevance does capacity factor
23 have?

24 A. Capacity factor indicates several things.
25 It indicates -- it could indicate things like plant

1 availability. Obviously the more the plant is
2 available the more it can operate. It also exhibits
3 its competitiveness in the market, so a high capacity
4 factor would show that it's not particularly being
5 impaired by, for example, gas prices. So it's a good
6 proxy for performance. It's -- there may be periods,
7 for example, where there is an unforced outage for an
8 extended period. A plant that will reduce its
9 capacity factors so that could change in any one
10 year, but over time it's a good indicator how well
11 the plant operates.

12 Q. What about regulatory compliance? You
13 were asked a question about Stuart and whether it was
14 MATS compliant.

15 A. Both Killen and Stuart is my
16 understanding they are MATS compliant. In my
17 testimony --

18 MR. WANNIER: Objection, your Honor. It
19 misstates the testimony. She was never asked about
20 MATS compliance.

21 A. In my response to the Sierra Club as to
22 plant retirements, I explained that the remaining
23 plants are all MATS compliant because MATS has been
24 in effect. So primarily the retirements were people
25 who were not willing to comply with MATS that have --

1 said differently, the plants have to be in MATS
2 compliance to be operating today. The plants on --
3 and I also provide a citation where it's been stated
4 that both plants are compliant with CCR which is the
5 coal combustion residuals.

6 I don't know what was assumed in their
7 cash flow analysis regarding other things such as
8 ELGs, which is effluent limitations guidelines, or
9 Clean Power Plan. So I can't speak to whether --
10 what the issue is there. The expectation is that the
11 current administration will either eliminate or
12 reduce some of the requirements under both of those
13 laws.

14 Q. And that --

15 EXAMINER PRICE: One second, please. I
16 am about to strike her answer. Her answer is going
17 to be stricken on my own motion in its entirety
18 because I was lenient and did not strike your answer
19 to his question which had nothing to do with MATS;
20 doesn't open the door for your counsel to ask a
21 question on redirect regarding MATS.

22 MR. COLLIER: Thank you. That's all the
23 questions I have. Thank you, your Honor.

24 EXAMINER PRICE: Thank you.

25 Ms. Petrucci, recross?

1 MS. PETRUCCI: No. Thank you.

2 EXAMINER PRICE: Mr. Boehm?

3 MR. BOEHM: No.

4 EXAMINER PRICE: IEU?

5 MR. PRITCHARD: No. Thank you.

6 EXAMINER PRICE: Consumers' Counsel?

7 MR. MICHAEL: No. Thank you, your Honor.

8 MR. WANNIER: Your Honor, may I just -- I
9 want to follow up on one line of questioning at the
10 very end of my original cross. Is that permissible?

11 EXAMINER PRICE: No.

12 MR. WANNIER: No.

13 EXAMINER PRICE: You can ask any
14 questions that stay within the redirect.

15 MR. WANNIER: Okay.

16 EXAMINER PRICE: No questions?

17 MR. WANNIER: No questions.

18 EXAMINER PRICE: Ms. Bojko?

19 MS. BOJKO: No. Thank you.

20 EXAMINER PRICE: Kroger?

21 MS. WHITFIELD: No questions.

22 EXAMINER PRICE: Mr. Lesser?

23 MR. LESSER: No, your Honor.

24 EXAMINER PRICE: Mr. Sharkey?

25 MR. SHARKEY: No questions, your Honor.

1 EXAMINER PRICE: Mr. McNamee?

2 MR. McNAMEE: It's unanimous, no
3 questions.

4 EXAMINER PRICE: I have no questions.

5 MR. COLLIER: I move --

6 EXAMINER PRICE: Let me excuse your
7 witness.

8 MR. COLLIER: Before she is excused, may
9 I move the admission of Exhibits 2 and 2A?

10 EXAMINER PRICE: You may. Any objections
11 to the admission of the exhibits Murray Energy
12 Exhibits 2 and 2A, subject to the motions --

13 MR. WANNIER: Subject to the --

14 EXAMINER PRICE: -- to strike?

15 MR. McNAMEE: No objection.

16 EXAMINER PRICE: They will be admitted.

17 (EXHIBITS ADMITTED INTO EVIDENCE.)

18 EXAMINER PRICE: Sierra Club?

19 MR. WANNIER: No objection.

20 EXAMINER PRICE: Do you want to move your
21 exhibit?

22 MR. WANNIER: I apologize. Yes, we do.
23 We would like to move the -- for introduction of
24 Sierra Club Exhibit 1.

25 EXAMINER PRICE: Any objections to the

1 admission of Sierra Club Exhibit 1?

2 Seeing none, it will be admitted.

3 (EXHIBIT ADMITTED INTO EVIDENCE.)

4 EXAMINER PRICE: Thank you. At this time
5 we will break for lunch. Let's come back at 12:30
6 when we will take Mr. -- I thought we were taking
7 Williams first.

8 MR. HAUGH: He's in Pittsburgh. We
9 switched, he and I.

10 EXAMINER PRICE: Taking Mr. Haugh and
11 then we will be done for the day. Go off the record.

12 (Thereupon, at 11:30 a.m., a lunch recess
13 was taken.)

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1 Thursday Afternoon Session,
2 April 6, 2017.

3 - - -

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

6 And, OCC, you want to call your witness?

7 MR. MICHAEL: Call Mike Haugh, your
8 Honor.

9 (Witness sworn.)

10 EXAMINER WALSTRA: Please be seated.
11 State your name and business address for the record.

12 THE WITNESS: Michael Haugh. Michael
13 Haugh and my business address is 10 West Broad
14 Street, Suite 1800, Columbus, Ohio 43215.

15 EXAMINER WALSTRA: Thank you. Go ahead.

16 MR. MICHAEL: Thank you, your Honor.

17 (EXHIBIT MARKED FOR IDENTIFICATION.)

18 - - -

19 MICHAEL HAUGH

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

22 DIRECT EXAMINATION

23 By Mr. Michael:

24 Q. Mr. Haugh, you should have before you
25 what was previously marked as OCC Exhibit 11. Do you

1 see that document?

2 A. Yes.

3 Q. Can you identify it, please.

4 A. It's my direct testimony in this case.

5 Q. And was it prepared under your direction
6 or control?

7 A. It was.

8 Q. And do you have any corrections or
9 additions to make to that testimony?

10 A. I do not.

11 Q. And if I were to ask you the questions in
12 that testimony, would your answers be the same?

13 A. They would.

14 MR. MICHAEL: Your Honor, I move for the
15 admission of OCC Exhibit 11, subject to cross.

16 EXAMINER WALSTRA: Thank you.

17 MR. OLIKER: Your Honor, at this time,
18 before we begin cross-examination, would it be a good
19 time to take motions to strike?

20 EXAMINER WALSTRA: Yeah.

21 MR. OLIKER: Thank you. Would you like
22 me to proceed?

23 EXAMINER WALSTRA: Go ahead.

24 MR. OLIKER: Thank you, your Honor. I
25 believe I have one motion to strike and this starts

1 on page 8, line 1, with the word "and" and continuing
2 to the end of line 3.

3 MS. BOJKO: I'm sorry. I did not hear.

4 MR. OLIKER: This would be on page 8,
5 line 1, starting with the word "and" and continuing
6 to the end of page -- or of line 3.

7 And then this is all for the same reason.
8 We will go to page 13, and it would be lines 6
9 through 11. And on line 11 it does end with the word
10 "appropriate." I wouldn't be moving to strike the
11 rest. But the basis for the motion to strike, your
12 Honor, is the same. This witness is offering a legal
13 conclusion, and he is not an attorney. These are
14 specifically legal recommendations for the Commission
15 that should be reserved for brief, if at all.

16 EXAMINER WALSTRA: Response?

17 MS. BOJKO: Your Honor, it might be more
18 expeditious, I have additional -- I don't have a mic
19 that works, but I have additional motions to strike
20 along the same lines as Mr. Oliker with regard to
21 legal -- legal conclusions as well as based on
22 Attorney Examiner Price's rulings earlier this
23 morning.

24 I have several others to add to that. I
25 think it might be beneficial to get them all out

1 there at the same time.

2 MR. MICHAEL: Under -- if I might
3 interrupt. It would be easier for OCC if we could
4 address them one at a time. That way I can respond
5 to Mr. Oliker and then listen to Ms. Bojko and
6 respond to Ms. Bojko's if your Honor would take that
7 under consideration.

8 EXAMINER WALSTRA: We can do it that way.

9 MR. MICHAEL: Thank you, your Honor. I
10 would first start with Mr. Oliker's second objection
11 regarding page 13, lines 6 through 11. Mr. Haugh is
12 testifying as a regulatory expert. He has been
13 before this Commission as a regulatory expert on many
14 occasions. And what Mr. Haugh is testifying today on
15 page 13, line 6 through 11 is a policy-related
16 argument regarding the proper -- what in his opinion
17 is the proper procedure for the review and
18 promulgation of rules.

19 He is not reaching any conclusions. He
20 is saying as a policy matter this is generally the
21 way and the way it should be done as far as reviewing
22 and promulgating rules. And as Mr. Oliker pointed
23 out, he opines as to what is appropriate or not, not
24 what is legal or not.

25 MR. OLIKER: Bill, are you done? I don't

1 want to interrupt you.

2 MR. MICHAEL: I was done with the
3 objection to 13, on page 13.

4 MR. OLIKER: And although he may have
5 said it's a policy recommendation, your Honor, he
6 specifically is citing to legal rules as the basis
7 for the conclusions he's offering in the testimony.
8 This isn't from his own policy perspective. This is
9 based on Ohio law if you read the testimony.

10 MR. MICHAEL: Well, actually, your Honor,
11 and I know your Honor can read the testimony, but
12 Mr. Haugh opines they should be reviewed in their
13 entirety at the time of every five years. So he is
14 simply opining based on his expertise what the proper
15 policy is for the review and promulgation of rules.

16 EXAMINER PRICE: Are you a lawyer?

17 THE WITNESS: No.

18 EXAMINER PRICE: Are you saying it would
19 be illegal to violate any statute, court order, or
20 Administrative Code Rule for the Commission to review
21 something outside of the five-year review?

22 THE WITNESS: No. I'm relating this to
23 public policy.

24 EXAMINER WALSTRA: I'll deny the motion
25 on 13 as he is giving an opinion on regulatory

1 policy.

2 MR. MICHAEL: Thank you, your Honor. And
3 if I might now address first a question of
4 clarification, Mr. Olikar, you moved to strike on
5 page 8, lines 1 through 3, beginning with the word
6 "and," correct?

7 MR. OLIKER: Yes. I believe it was the
8 portion saying it doesn't "follow the proper laws for
9 review."

10 MR. MICHAEL: And I would say, your
11 Honor, something similar in relation -- in relation
12 to this motion. This is a regulatory issue and
13 Mr. Haugh is being offered as a regulatory expert as
14 to what would be in his opinion the correct way as a
15 matter of public policy to address issues of
16 regulation, and the Commission has a history of
17 allowing regulatory experts to opine on such matters.

18 EXAMINER PRICE: Well, that would be
19 great if that's what he said. He actually says "do
20 not follow the proper laws for review of
21 administrative rules."

22 MR. MICHAEL: Well, your Honor, I'm
23 sorry. I would be willing to withdraw the reference
24 to the laws and leave everything else, if that would
25 cure your Honor's concern with that particular

1 provision.

2 EXAMINER WALSTRA: I am going to grant
3 Mr. Oliker's motion from the word "and" to the end of
4 the sentence.

5 MR. OLIKER: Thank you, your Honor.

6 EXAMINER WALSTRA: We will strike that.
7 Ms. Bojko is on microphone No. 4.

8 MR. MICHAEL: There must be a message
9 there.

10 MS. BOJKO: Yes. That you have not heard
11 me speak all day.

12 MR. MICHAEL: I am trying to keep that
13 going.

14 MS. BOJKO: Your Honor, I have several
15 motions to strike. If Mr. Michael would prefer I do
16 them one by one, I would be happy to do that.

17 MR. MICHAEL: That would be great.

18 MS. BOJKO: The first motion to strike is
19 on page 7, and it's lines 21 going over to page 8, so
20 I guess the remaining part of that paragraph that was
21 just stricken per Mr. Oliker's motion. And this --
22 the witness is not an attorney as has been
23 established, and he is making legal conclusions that
24 cannot be made by a layperson. And the language in
25 Mr. Haugh's testimony is no different than the

1 language and legal conclusions made by Ms. Medine
2 that OCC supported to be stricken and were, in fact,
3 stricken earlier this morning. He says it does not
4 follow the traditional rules and policies and
5 practices for reasonable arrangements and goes on to
6 say that -- it then refers to a specific statutory
7 section.

8 MR. MICHAEL: And if I might, your Honor,
9 in response to that, Mr. Haugh is obviously talking
10 about traditional rules and PUCO policies regarding
11 reasonable arrangements. Those are regulatory
12 issues. I don't want to beat the dead horse, but
13 Mr. Haugh is a regulatory expert, and he is giving
14 his opinion, right, and he is testifying to the
15 traditional rules and PUCO policy. So that's clearly
16 a matter of regulatory policy as it relate to the --
17 relates to the statute, your Honor. He does, in
18 fact, say it appears inconsistent with a particular
19 statute. He does not make -- jump to the legal
20 conclusion that it is inconsistent with the statute.
21 So for those reasons the motion to strike should be
22 denied.

23 I would just say I don't recall our
24 joining any motion regarding Ms. Medine, but the
25 record will reflect what the record reflects on that.

1 MS. BOJKO: Mr. Ajay --

2 MR. KUMAR: I supported Mr. Collier in
3 his defending.

4 EXAMINER WALSTRA: Regardless.

5 MS. BOJKO: May I respond, your Honor?
6 This is no different than the pieces of Ms. Medine's
7 testimony that was struck on pages 7 and 21. It's no
8 different. She's -- especially on top of page 21,
9 she's opining of what her understanding of a
10 statutory provision is. This is no different when he
11 says something is inconsistent with the statutory
12 provision. That's a legal conclusion that he is
13 making.

14 EXAMINER PRICE: Well, I think he could
15 distinguish if he chose. I am not saying he should
16 because the provisions Ms. Medine was talking about
17 were whether the Commission had lost its rights and
18 whether the Commission had the ability to act.

19 He's just saying here -- he is not
20 questioning the Commission's ability to act. He's
21 just questioning whether it's following -- whether
22 the action would be consistent with a particular
23 statute that may or may not apply. But I'm not
24 saying we -- that's the basis. I am just throwing
25 that out there for you to respond to.

1 MS. BOJKO: Yes, your Honor. He actually
2 makes a conclusion that something is contrary to Ohio
3 law. That -- that is a legal conclusion and he is
4 making that in the -- at least the second piece of
5 the part I am asking to be struck, and he references
6 Commission rules which are legal rules that are
7 binding upon the Commission.

8 MR. MICHAEL: And they are also known as
9 regulatory principles or practices which is obviously
10 one of the prongs.

11 EXAMINER WALSTRA: I am going to deny the
12 motion to strike. I think he does try to stick to
13 the policies and doesn't try to come to an exact
14 legal conclusion. So that motion is denied.

15 MR. MICHAEL: Thank you, your Honor.

16 MS. BOJKO: Your Honor, my next motion is
17 on page 8, lines 8 through 9. Again, he is referring
18 to a statutory provision, and he is saying what must
19 be done under that statutory provision. That is a
20 legal conclusion and that goes to exactly what
21 Mr. Price was discussing with Ms. Medine is what the
22 Commission can or cannot do under a particular
23 statutory provision.

24 MR. MICHAEL: Your Honor, not
25 surprisingly I disagree with Ms. Bojko. I think what

1 is clear Mr. Haugh is doing there is providing
2 context for the following paragraph regarding his
3 analysis. He's not coming to any legal conclusions
4 about what any particular statutory provision
5 provides. Rather, he is reiterating what it says and
6 he is certainly capable of reading and then he is
7 going on to make his policy and regulatory principle
8 argument, so there is no legal conclusion there to
9 strike.

10 EXAMINER PRICE: Why -- I mean, that's an
11 interesting point. Then why shouldn't we just strike
12 it based on relevance? If he is not opining that we
13 are acting under the statute, he is simply giving a
14 dissertation on a statute that we are not being asked
15 to act under today, which is interesting, but where
16 is the relevance?

17 MR. MICHAEL: Well, because -- I don't
18 want to speak for Mr. Haugh, but the relevance is and
19 the point Mr. Haugh is trying to make is that there
20 is a -- as a matter of policy and regulatory
21 principle a certain way this Commission handles
22 reasonable arrangements.

23 EXAMINER PRICE: But there are no
24 reasonable arrangements proposed in the stipulation.

25 MR. MICHAEL: But, I mean, it's an

1 economic development rider. He is addressing
2 economic development --

3 EXAMINER PRICE: That's true, but doesn't
4 4928.143 allow economic development provisions?

5 MR. MICHAEL: Well, whether it does or
6 doesn't --

7 EXAMINER PRICE: First, answer my
8 question. Doesn't it?

9 MR. MICHAEL: Yes, but I think what
10 Mr. Haugh is opining even though it does allow for
11 such things, the Commission should go about
12 evaluating and analyzing the degree to which it is
13 cost consistent with regulatory principles and is in
14 the public interest consistent with some principles
15 that it generally uses in other contexts for economic
16 development arrangements for the Commission's
17 consideration.

18 MS. BOJKO: Your Honor, I would like to
19 amend my motion to strike to include relevancy.

20 MR. McNAMEE: I have got a question of
21 clarification. Are we talking about the first
22 sentence in that paragraph?

23 MS. BOJKO: Yes, yes.

24 MR. McNAMEE: Not the second.

25 MS. BOJKO: Correct.

1 MR. MICHAEL: You had --

2 MS. BOJKO: The first two sentences.

3 MR. McNAMEE: First two sentences, lines
4 8 through 10.

5 MS. BOJKO: 8 through 10.

6 MR. McNAMEE: I thought you might.

7 MS. BOJKO: Are you joining in that
8 motion?

9 MR. McNAMEE: I am just sitting here.

10 MR. IRELAND: We will join in the motion.

11 MS. BOJKO: Thank you. I appreciate
12 that.

13 EXAMINER WALSTRA: I'm going to deny the
14 motion to strike. I think the statute speaks for
15 itself, but I think he is just providing context
16 there.

17 MR. MICHAEL: Thank you, your Honor.

18 MS. BOJKO: Your Honor, my next motion is
19 on page 10, lines 12 through 14. Again, he's drawing
20 a legal conclusion about what a particular rider does
21 in this case with regard to the law. And he is
22 making that legal conclusion based on his actual
23 prior statements including the -- I will leave it at
24 that. He is making legal conclusions based on the
25 prior statements.

1 EXAMINER WALSTRA: That one speaks pretty
2 clearly about the law there so I will grant that
3 motion to strike.

4 MR. MICHAEL: Your Honor, may I ask a
5 quick question as it relates to that ruling, please?
6 And my question would be would OMA's counsel and your
7 Honor entertain simply the reference to circumventing
8 the law but allow the discussion regarding PUCO rules
9 which are regulatory matters? Obviously one of the
10 prongs is regulatory principles and practices and
11 public interest. I certainly, you know, respectfully
12 disagree with your Honor's ruling, of course, but I
13 was wondering if your Honor would limit the ruling to
14 simply the reference to the law and allow reference
15 to regulatory or PUCO rules which are regulations to
16 stand.

17 EXAMINER PRICE: You don't agree with us,
18 but you are asking us to compromise?

19 MR. MICHAEL: Yes, your Honor. We're
20 professionals.

21 MS. BOJKO: It's still -- an
22 administrative rule is still a law.

23 EXAMINER PRICE: We would like to think
24 it has the force of law.

25 EXAMINER WALSTRA: Your request for

1 compromise is denied.

2 MR. MICHAEL: Thank you, your Honor.

3 MS. BOJKO: Your Honor, my next motion is
4 page 10, the end of line 22, after the comma,
5 beginning with "and" to the end of the sentence for
6 the same reasons. Clearly talking about legal
7 conclusion.

8 MR. IRELAND: Where are you, Kim?

9 MS. BOJKO: Page 10, line 22, after the
10 comma, starting with "and." That, I think, meets
11 Mr. Michael's compromise for the rest of the
12 sentence.

13 MR. MICHAEL: If you would limit,
14 Ms. Bojko, your motion to strike to the law and I
15 think we have a deal.

16 MS. BOJKO: Since your last request was
17 denied, I don't believe that I am willing to go
18 there.

19 MR. MICHAEL: Your Honor, I would request
20 then that your Honor limits the ruling on the motion
21 to strike to the words "the law" and let the
22 reference to "rules" stand under the prong regarding
23 regulatory principles.

24 EXAMINER PRICE: Where -- what are you
25 saying it should now read?

1 MS. BOJKO: Oh, no, no. Your Honor, I
2 don't want it to be read into the record.

3 MR. MICHAEL: I am going to answer your
4 Honor's question as I like to do. So it would read,
5 the last sentence, your Honor, "The rider is unjust
6 and unreasonable for that reason, and conflicts with
7 the PUCO rules."

8 EXAMINER PRICE: Isn't "unjust and
9 unreasonable" a term of art that has specific legal
10 meaning in our -- in what we do in the energy world?

11 MR. MICHAEL: It often does, your Honor.

12 MS. BOJKO: And that's why I believe my
13 position was a compromise to begin with, your Honor.

14 EXAMINER WALSTRA: I am going to grant
15 the motion to strike.

16 MS. BOJKO: Thank you. Oh, my next
17 motion, your Honor, is on page 11, the entire
18 question and answer 19 starting on lines 18 going
19 through page 12 through line 3. This is asking the
20 witness about whether a provision is unlawful and is
21 specifically and directly referencing a statutory
22 provision and is drawing legal conclusions about that
23 statutory provision and how the case is applicable to
24 that statutory provision.

25 MR. PRITCHARD: Ms. Bojko, are you

1 including footnote 6?

2 MS. BOJKO: Oh, I'm sorry. Yes, thank
3 you. Footnote 6 should be included.

4 MR. MICHAEL: And, your Honor, I would
5 say this motion to strike should be rejected on
6 grounds similar to the motion to strike that was
7 rejected by your Honor earlier. Mr. Haugh is simply
8 reciting a statute. It speaks for itself. And then
9 he is going on to his opinion as an expert regarding
10 the extent to which the payments made to various
11 parties in the stipulation are or are not rebates.
12 So there is no legal conclusion reached.

13 EXAMINER PRICE: Except the part where he
14 says "unlawful," right?

15 MR. MICHAEL: I was going to get to that,
16 your Honor.

17 MS. BOJKO: And the footnote, your Honor.

18 MR. MICHAEL: But, again, so as it
19 relates to the recitation of the statute, it's
20 nothing more than a recitation of the statute to
21 provide context. Then he goes on to his opinions,
22 and OCC would be willing, based on your Honor's prior
23 rulings, to strike "are unlawful."

24 MR. IRELAND: Your Honor, we would join
25 in the motion. Simply add what he is opining on are

1 legal conclusions, not just the statute, but then he
2 also offers a legal conclusion which is what the
3 Commission is supposed to do, not the witness.

4 EXAMINER WALSTRA: I am going to grant in
5 part and deny in part the motion. I am going to
6 strike the last sentence as well as the footnote.

7 MR. MICHAEL: Thank you, your Honor.

8 MS. BOJKO: Thank you, your Honor. That
9 concludes my motions. Thank you.

10 EXAMINER WALSTRA: Thank you. Anything
11 else?

12 Is he open for cross?

13 MR. MICHAEL: Yes, he is.

14 MR. ALEXANDER: Your Honor, I believe I
15 am going first.

16 EXAMINER WALSTRA: Okay.

17 - - -

18 CROSS-EXAMINATION

19 By Mr. Alexander:

20 Q. Good afternoon, Mr. Haugh.

21 A. Good afternoon.

22 Q. Would you please turn to your testimony,
23 page 3, line 10.

24 A. Yes.

25 Q. And here you address the Commission's

1 three-prong test for the evaluation of stipulations,
2 correct?

3 A. Yes.

4 Q. And the remainder of your testimony
5 addresses prongs two and three of that test, correct?

6 A. Correct.

7 Q. Do you contest that the proposed
8 stipulation was a product of serious bargaining among
9 capable and knowledgeable parties?

10 A. I have no opinion on that.

11 Q. You agree that there were numerous
12 settlement meetings open to all intervenors in this
13 proceeding, correct?

14 MR. MICHAEL: Object to relevance, your
15 Honor. Mr. Haugh just said that he had no opinion on
16 prong one, so I don't know why we need to ask any
17 questions about it.

18 MR. ALEXANDER: Your Honor, this is
19 actually a factual question. Mr. Haugh has factual
20 knowledge regarding these meetings; so, therefore, I
21 am asking him in his context as a fact witness.

22 EXAMINER WALSTRA: If he knows, he can
23 answer.

24 THE WITNESS: Could you reread the
25 question, please.

1 EXAMINER WALSTRA: Please.

2 (Record read.)

3 A. I know there were settlement meetings
4 open to all. "Numerous" is a -- it's not a defined
5 term so.

6 Q. I will rephrase.

7 A. There were -- there were settlement
8 meetings open to all participants.

9 Q. And I will rephrase the question. You
10 will agree there was more than one settlement meeting
11 open to all intervenors, correct?

12 A. Yes.

13 Q. And OCC participated in those settlement
14 discussions, correct?

15 A. I don't know about all of the settlement
16 discussions. I know there was more than one that the
17 OCC participated in.

18 EXAMINER PRICE: How many meetings do you
19 have knowledge that OCC participated in?

20 THE WITNESS: Off the top of my head, at
21 least two or three. I can't count all of them right
22 now.

23 MR. ALEXANDER: And that was my next
24 question, your Honor. Thank you.

25 Q. Changing topics, I would like to discuss

1 rider TCRR-N and your recommendations there. First,
2 I think a little background would be helpful for the
3 record. Could you please provide your understanding
4 of what rider TCRR-N currently does.

5 A. From a basic standpoint it takes the
6 transmission costs incurred by Dayton Power and
7 Light's customers and essentially recovers those
8 costs.

9 Q. And to be even more specific, it recovers
10 the nonmarket-based transmission and ancillary
11 services costs for its customers.

12 A. Yes, yes. I'm sorry. I missed that.

13 Q. And the specific costs it recovers
14 include the network integration transmission
15 services, or NITS, charges, correct?

16 A. It's my understanding that's one of the
17 items, yes.

18 Q. And it also recovers the regional
19 transmission expansion -- strike that.

20 It also recovers the regional
21 transmission expansion plan or RTEP charges, correct?

22 A. I believe that's true.

23 Q. And it also recovers the PJM scheduling,
24 system control, and dispatch service charges,
25 correct?

1 A. You are getting -- you are getting a
2 little beyond my entire scope of knowledge of that
3 but that -- that would be one -- more than likely
4 that would be something that would be involved in
5 that.

6 Q. Would you agree there are at least nine
7 other types of nonmarket-based charges currently
8 included in rider TCRR-N besides RTEP and NITS?

9 A. To say there is nine, I'm not -- I can't
10 say that. I'm not trying to be evasive. I don't
11 know that.

12 Q. Did you review -- let's take it a step
13 back. You would agree that rider TCRR-N was created
14 in Dayton Power and Light's 2012 ESP, Case No.
15 12-426, correct?

16 A. I believe that's true, yes.

17 Q. And in connection with your testimony in
18 this proceeding regarding the TCRR-N pilot program,
19 did you have occasion to review Dayton Power and
20 Light's filing regarding the line items to be
21 included in the rider TCRR-N?

22 A. I'm sorry. You were cutting out there.

23 Q. Sure. In connection with your -- in
24 connection with your testimony in this proceeding,
25 did you have occasion to review Dayton Power and

1 Light's 2012 filings identifying the line items to be
2 included in rider TCRR-N?

3 A. I did not go into that detail, no.

4 Q. Have you ever reviewed the line items to
5 be included in rider TCRR-N?

6 A. I believe I did back when it was
7 originally filed.

8 Q. Would it refresh your recollection to
9 review the testimony of DP&L Witness Hale which
10 identifies those line items?

11 A. From 2012?

12 Q. Yes.

13 A. Sure.

14 MR. ALEXANDER: Your Honor, may we
15 approach?

16 EXAMINER WALSTRA: You may.

17 Q. I am just using this to refresh your
18 recollection, so I am not going to mark it. I have
19 just handed you Dayton Power and Light's -- strike
20 that.

21 I have just handed you a document
22 captioned "Direct Testimony of Claire E. Hale" from
23 Case No. 12-426. Is this the testimony you
24 previously reviewed?

25 A. There's not a time or date stamp on it

1 but it appears to be the same testimony from that
2 case.

3 Q. And if you could turn to page 4, starting
4 at line 14 of that testimony. Are you there?

5 A. Yes.

6 Q. And does this refresh your
7 recollection -- and does this refresh your
8 recollection as to the line items included in rider
9 TCRR-N?

10 A. Yes.

11 Q. Okay. So would you agree that rider
12 TCRR-N includes costs relating to PJM's scheduling,
13 system control, and dispatch service?

14 A. Yes.

15 Q. Would you agree rider TCRR-N includes
16 costs relating to transmission owner, system control,
17 and dispatch service?

18 A. Yes.

19 Q. Would you agree rider TCRR-N includes
20 costs relating to reactive supply and voltage
21 control?

22 MR. MICHAEL: Your Honor, if I could just
23 object to the questioning. I'm not sure if
24 Mr. Alexander is referring to the TCRR-N in that case
25 or this case or if the one in this case is the same

1 as the one in that case. That hasn't been
2 established yet and I would like some clarification
3 on that by way of my objection.

4 MR. ALEXANDER: Well, your Honor, the
5 rider TCRR-N pilot relates to the current TCRR-N.
6 These are all line items included in the rider TCRR-N
7 so as to the effect of the pilot, to evaluate that we
8 need to look at what line items are included in that
9 rider.

10 EXAMINER WALSTRA: Overruled.

11 Q. I believe there was a question pending.

12 A. Yes.

13 Q. And would you agree that rider TCRR-N
14 currently includes costs relating to black start
15 service?

16 A. Yes.

17 Q. And would you agree rider TCRR-N
18 currently includes NERC and RFC costs?

19 A. Yes.

20 Q. And would you agree rider TCRR-N includes
21 expansion cost recovery costs?

22 A. Yes.

23 Q. And would you agree rider TCRR-N includes
24 load response charge allocation?

25 A. Yes.

1 Q. And would you agree rider TCRR-N includes
2 costs relating to generation deactivation?

3 A. Yes.

4 Q. And would you agree that rider TCRR-N
5 includes costs relating to the Michigan-Ontario
6 interface phase angle regulators?

7 A. I don't see that in the testimony.

8 Q. Okay.

9 A. So I can't confirm that.

10 Q. Now, in light of the 11 line items we've
11 just identified, can we agree to refer to the charges
12 currently in rider TCRR-N as the rider TCRR-N line
13 items?

14 A. That's fine.

15 Q. Okay. And would you agree that all of
16 the rider TCRR-N line items are not market-based
17 charges?

18 A. Yes.

19 Q. And all of the rider TCRR-N charges are
20 not able to be hedged, correct?

21 A. I can't agree to that necessarily just
22 because there are I would say almost an infinite
23 amount of hedging opportunities for people, and
24 people will do financial transactions on just about
25 everything in my experience in working in trading

1 organizations. So I can't -- I can't necessarily
2 agree with that.

3 Q. Let me ask you this, are you aware of any
4 product which would hedge any of these PJM line
5 items?

6 A. I'm not but.

7 Q. Now, I believe you already testified that
8 rider TCRR-N was approved in the 2012 DP&L ESP; is
9 that correct?

10 A. Yes.

11 Q. Now, as part of that 2012 ESP decision,
12 Dayton Power and Light had to get a waiver from Ohio
13 Administrative Code Section 4901:1-36, correct?

14 A. I don't know.

15 Q. Okay. Were you aware that Dayton Power
16 and Light had to get a waiver in order to charge
17 transmission charges on a nonbypassable basis?

18 A. Off the top of my head, no.

19 Q. Okay. The Dayton Power and Light 2012
20 ESP decision was issued in September of 2013,
21 correct?

22 A. That sounds right.

23 Q. And you would agree that prior to
24 September of 2013, all of the rider TCRR-N charges
25 were borne for -- strike that.

1 You are aware that prior to September of
2 2013 for shopping customers, all of the rider TCRR-N
3 customer charges were borne by CRES providers.

4 A. Your "borne by CRES providers" -- they
5 were, yes. That's yes.

6 Q. And the CRES providers would then pay
7 Dayton Power and Light for those charges?

8 A. Yes.

9 Q. And those nonmarket-based rider TCRR-N
10 charges vary with customer load, correct?

11 A. Load and demand both, yes.

12 Q. So a large industrial customer will pay a
13 different amount than a residential customer, for
14 example?

15 A. In most cases, yes. There is the case if
16 it's a -- demand based, the charges incurred on a
17 demand base, then in theory if they end up with an
18 industrial customer, residential customer had the
19 same coincident peak, then you would end up -- then
20 they could be the same in theory. So it's not
21 always, but the majority of the time that would be
22 the case.

23 Q. And as a result of -- as a result of
24 rider TCRR-N, currently all customers are forced to
25 pay Dayton Power and Light for these line items on a

1 nonbypassable basis, correct?

2 A. For the TCRR-N yes.

3 Q. And you would agree that these rider
4 TCRR-N line items can fluctuate significantly.

5 A. They can fluctuate. The definition of --
6 would define significantly.

7 Q. When the costs included in rider TCRR-N
8 fluctuate, those fluctuations are eventually
9 reflected in Dayton Power and Light's rider TCRR-N
10 compliance filings?

11 A. Sure. Dayton Power and Light will -- as
12 the cost changes, they will update the rider and
13 change that as it -- I believe it's annually they
14 change that.

15 Q. And so the costs included in -- strike
16 that.

17 And so the rate of rider TCRR-N will
18 fluctuate by year?

19 A. Yes. It's a passthrough essentially.

20 Q. Now, you would agree that some customers
21 value rate stability.

22 A. That's a possibility.

23 Q. And customers who do, in fact, value rate
24 stability may consider it a benefit to avoid
25 fluctuations in transmission and ancillary service

1 charges?

2 THE WITNESS: Could you reread the
3 question, please?

4 (Record read.)

5 A. If they value stability, I would assume
6 they would want stability in all their rates.

7 Q. True. I will be a little more specific.
8 Would you agree that customers who value rate
9 stability may like to sign a contract with their CRES
10 provider whereby the CRES provider will bear the risk
11 of changes in the line items included in rider
12 TCRR-N?

13 A. That's a possibility.

14 Q. Turning back to your testimony, page 5,
15 line 7. Do you see that?

16 A. I'm there.

17 Q. Now, here you say that the pilot program
18 does not provide any details for how the program
19 should be established. Wouldn't you agree that
20 whether or not customers -- actually strike that.

21 Do you see where I've referred you in the
22 testimony?

23 A. Yes.

24 Q. Okay. Wouldn't you agree whether or not
25 customers have a demand for this pilot program will

1 be reflected in the number of customers who sign up
2 for the program?

3 A. I'm not opining on if there is a
4 demand -- if customers want this or not.

5 Q. Do you agree customers would like to sign
6 up for this pilot program?

7 MR. MICHAEL: Objection. Beyond the
8 scope. He just said he wasn't opining on that
9 subject matter.

10 EXAMINER WALSTRA: Overruled.

11 A. I have no idea if customers would want
12 to.

13 Q. Would you agree that -- strike that.

14 You would agree that customer interest in
15 a pilot program is one of the factors the Commission
16 should consider in determining whether a pilot
17 program should be expanded?

18 A. Well, sure. People -- if you are going
19 to have a pilot program, you should want people that
20 want to enroll in it.

21 Q. And if customers do sign up for the pilot
22 program as anticipated in the stipulation, you agree
23 that their share of the rider TCRR-N costs will
24 transfer with those customers.

25 A. That I don't know and that's why part of

1 my testimony when I am saying there needs to be a
2 more complete evaluation of this program.

3 Q. Okay. And so would you agree that it
4 would be appropriate for the customers who
5 participate in that pilot program, the TCRR-N costs
6 would be transferred to their CRES providers?

7 A. That's what -- that's what the program
8 states will happen. My concern is that there will be
9 an undue -- there is a possibility of an undue
10 shifting of costs from customers leaving, to -- to
11 the customers that aren't.

12 Q. Sure. And that's what I want to explore.
13 As the rider TCRR-N line items vary with, as you
14 said, customer demand and energy usage, and we're
15 going back to the pre2013 methodology of allocating
16 those costs to the customers with their CRES
17 providers, wouldn't you agree there is no risk that
18 there will be cost shifting?

19 A. I can't say that. That's -- that's why I
20 am saying there needs to be a further evaluation of
21 this pilot program after a set amount of time.

22 Q. Wouldn't you agree we are going back to
23 the billing methodology in use prior to September of
24 2013?

25 A. Not necessarily.

1 Q. Can you identify any specific difference
2 between the billing methodology proposed in the
3 stipulation and the billing methodology used prior to
4 September of 2013?

5 A. The issue is that -- I guess the issue is
6 that we don't really know what exactly is going to
7 happen in this pilot program. And that's essentially
8 why I am stating if there is going to be a pilot
9 program, it needs to be evaluated after a shorter
10 term than what's proposed in the stipulation.

11 Q. So you can't identify any difference
12 between the allocation of rider TCRR-N costs in the
13 pilot program and the allocation of those costs prior
14 to September of 2013.

15 A. I don't -- it's -- I don't think it's
16 a -- it's a possible evaluation. There's too many
17 variables that are out there, the differences between
18 what -- between pre2013 and what's proposed in this
19 pilot program.

20 Q. So can you identify any difference
21 between rider TCRR-N as proposed in the stipulation
22 and the way rider TCRR-N was billed prior to
23 September of 2013?

24 A. Now, there is going to be a difference of
25 certain customers will be leaving and certain -- it's

1 how different customers will be treated differently,
2 that customers within the same class and how their --
3 those costs are then allocated based on -- based by
4 class and if there will be a short -- if there will
5 be a short and -- if there will be a change in -- a
6 shifting of cost between not only one customer to
7 another within the same class but also customers
8 between classes because the one -- the one issue is
9 that Dayton needs to recover all of the costs they've
10 received, and they will determine how that -- how
11 those costs are allocated. And without exact
12 metering data for all customers, then it could be --
13 will be difficult to figure out exactly how this is
14 going to happen without receiving the data from this
15 pilot program.

16 MR. ALEXANDER: Your Honor, I move to
17 strike the response as nonresponsive.

18 EXAMINER WALSTRA: I am going to
19 overrule.

20 Q. I am going to ask this for a fourth time.
21 Can you identify any difference between the way the
22 TCRR-N costs were billed under the current pilot
23 program and the way TCRR-N costs were billed prior to
24 September of 2013?

25 MR. MICHAEL: Objection, asked and

1 answered.

2 MR. ALEXANDER: Your Honor, I haven't got
3 an answer to this question yet.

4 MR. MICHAEL: If I might, your Honor, he
5 just moved to strike what the answer was, and your
6 Honor denied it, so you have gotten an answer.

7 EXAMINER WALSTRA: Are there specific
8 differences that you can name, identify between the
9 two?

10 THE WITNESS: That's part of what I am
11 saying is it's unknown how this is going to affect
12 other customers.

13 EXAMINER WALSTRA: But between the two,
14 are there specific differences that make it --

15 THE WITNESS: Specific, no. It's the --
16 in its totality is the issue.

17 EXAMINER WALSTRA: Between the two,
18 between prior to 2013 and now, is there any specific
19 differences that you --

20 THE WITNESS: Again, that's what I said,
21 no, no, but there --

22 EXAMINER WALSTRA: Okay. Thank you.

23 MR. ALEXANDER: Thank you, your Honor.

24 Q. (By Mr. Alexander) If I could have you
25 move to page 5, line 15, where you address

1 implementation costs of the program, do you see that?

2 A. Yes.

3 Q. You agree there is no provision in the
4 stipulation which increases the cost to customers to
5 pay for the rider TCRR-N pilot program, correct?

6 A. There's none at this time.

7 Q. You are not aware of any evidence which
8 suggests there are any implementation costs
9 associated with the rider TCRR-N pilot program.

10 A. No.

11 Q. And you are not aware of any evidence
12 which suggests Dayton Power and Light will seek the
13 recovery of any future implementation costs from
14 customers, correct?

15 A. It would be my assumption that there are
16 costs they will be -- they will seek recovery from
17 customers.

18 Q. My question wasn't your assumption. My
19 question was you are not aware of any evidence which
20 suggests Dayton Power and Light will seek the
21 recovery implementation costs from customers?

22 A. It's not in the settlement.

23 Q. And at page 6, line 1, you address what
24 you identify to be things that should have been
25 identified in the pilot program. Do you see that?

1 A. Yes.

2 Q. Now, is your objection to the TCRR-N
3 pilot program itself or to the lack of detail
4 provided in the stipulation about the rider TCRR-N
5 pilot program?

6 A. It's essentially, as I stated at the
7 start of this question and answer, question and
8 answer 10 on page 5, is that it's not set up as a
9 traditional pilot program. My -- I don't necessarily
10 opine on the merits of TCRR-N. It's more that if we
11 are going to have a pilot program, it needs to have
12 proper parameters.

13 Q. Okay. So fair to say you don't have an
14 opinion as to the merits of the pilot program itself?

15 A. Correct.

16 Q. Moving topics to the economic development
17 rider, if you could turn to page 7, line 21.

18 A. I'm there.

19 Q. Now, as you cite in your testimony, a --
20 and here I am referring specifically to page 8,
21 line 8, "a reasonable arrangement" is a term of art
22 under Ohio law, specifically Section Revised Code
23 4905.31, correct?

24 A. Yes.

25 Q. And the rules governing reasonable

1 arrangements are located in Ohio Administrative Code
2 Section 4901:1-38, correct?

3 A. Yes.

4 Q. And your testimony identifies nothing
5 establishing that the economic development rider is,
6 in fact, a reasonable arrangement as defined under
7 Revised Code Section 4905.31, correct?

8 THE WITNESS: Could you reread the
9 question, please.

10 (Record read.)

11 A. No. I'm saying that those rules should
12 be considered when considering this -- this part of
13 the settlement.

14 Q. I believe you said "no" at the beginning
15 of that answer. I think you meant to say "yes," so I
16 will reask the question.

17 A. Yeah. Okay.

18 Q. Your testimony identifies nothing
19 establishing that the economic development rider is,
20 in fact, a reasonable arrangement as defined in the
21 Ohio Revised Code, correct?

22 MR. MICHAEL: Objection, asked and
23 answered.

24 EXAMINER WALSTRA: Overruled.

25 A. I think we got caught up in a double

1 negative. I was saying, no, it does not, so, yes.

2 Q. So your testimony does not identify -- I
3 will rephrase.

4 A. Yes. I can answer it as "yes."

5 Q. And your testimony identifies nothing in
6 the Ohio Administrative Code which would establish
7 the economic development rider is subject to
8 provisions of Section 4901:1-38, correct?

9 A. Correct.

10 Q. And you are not aware of any provision in
11 Ohio law which would establish that the economic
12 development rider is subject to the provisions
13 governing reasonable arrangements, correct?

14 A. Correct.

15 Q. And you are aware, as a regulatory
16 expert, that electric security plans are governed by
17 Section 4928.143, correct?

18 A. Subject to check on that, yes.

19 Q. Would it refresh your recollection to see
20 the statute?

21 A. I can -- I'll take your word for it.

22 Q. And you would agree the Commission
23 evaluates electric security plans under Section
24 4928.143, correct?

25 A. Yes.

1 Q. Now, specifically -- actually strike
2 that.

3 I am going to provide you with a copy of
4 the statute just so you are not forced to guess.

5 All right. Mr. Haugh, I have just handed
6 you a copy of Revised Code Section 4928.143, correct?

7 A. Yes.

8 Q. Okay. Directing your attention to
9 Section (B) (2) (d), Revised Code Section
10 4928.143(B) (2) (d) does not include any requirement
11 that proposals subject to that provision are also
12 subject to the Commission's reasonable arrangement
13 rules, correct?

14 MR. MICHAEL: Objection, legal
15 conclusion. Ironical they move to strike stuff and
16 then ask him questions after handing him a statute.

17 MR. ALEXANDER: Your Honor, the witness
18 provides an opinion which was not stricken as to the
19 propriety of the reasonable arrangement rules and how
20 they should be covered and, to quote Mr. Michael, the
21 witness can read.

22 MR. MICHAEL: Then the statute speaks for
23 itself, and I add that to my objection.

24 EXAMINER WALSTRA: I feel like you are
25 asking for a legal conclusion from him so I am going

1 to sustain.

2 MS. BOJKO: Your Honor, I would like to
3 renew my motion to strike lines 8 to 10 on page 8.

4 MR. ALEXANDER: Your Honor, I would add
5 to that lines -- page 11, lines 20 to 21.

6 MS. BOJKO: Thank you.

7 MR. MICHAEL: Your Honor should reject
8 those motions for the same reason your Honor did the
9 first time, which was it was providing context and
10 the statute speaks for itself. Counsel for Honda and
11 Dayton are asking entirely different questions right
12 now about interpreting the statute and what it does
13 or doesn't require.

14 MR. ALEXANDER: Your Honor, this witness
15 is providing a regulatory opinion in the context as a
16 regulatory expert as to the standard that should be
17 applied by the Commission. The witness has cited
18 statutes in his testimony regarding reasonable
19 arrangements. I am asking him about another statute
20 which governs ESPs which does not include those
21 revisions, and I would like to get the witness's
22 opinion on that.

23 MS. BOJKO: Your Honor, if I may add, on
24 page 8, line 9, he specifically says "The process
25 requires an application," and I think that goes to

1 the heart of what Mr. Alexander is trying to ask.

2 MR. MICHAEL: I don't know how Ms. Bojko
3 knows what Mr. Alexander's part does or does not --
4 or is not aimed at but.

5 EXAMINER PRICE: She's special that way.

6 MR. MICHAEL: I know.

7 MS. BOJKO: Am I wrong?

8 MR. ALEXANDER: She's correct.

9 EXAMINER PRICE: Only Mr. Alexander has
10 the standing to raise that point.

11 MR. ALEXANDER: I agree with Ms. Bojko,
12 your Honor.

13 MS. BOJKO: Get that on the record.

14 EXAMINER WALSTRA: I am going to deny the
15 motions to strike. You can ask for his
16 understanding, but in terms of asking for a specific
17 interpretation of the law, I think that's getting
18 into a legal conclusion.

19 MR. ALEXANDER: Okay.

20 MR. MICHAEL: Thank you, your Honor.

21 MR. ALEXANDER: Thank you, your Honor.

22 Q. (By Mr. Alexander) Mr. Haugh, is it your
23 understanding that Ohio Revised Code Section 4928.143
24 (B) (2) (d) does not require the ESP provisions under
25 that statute to meet the requirements for reasonable

1 arrangements?

2 A. I am looking at (B) (2) (d) at terms,
3 conditions, or charges related to limitations on
4 customer shopping? And you asked if there were any
5 limitations on shopping in that section or
6 limitations on reasonable arrangements?

7 Q. I asked if that section represented the
8 reasonable arrangements rules.

9 A. That particular one does not.

10 Q. And similar to Section (B) (2) (i), does it
11 reference reasonable arrangement rules?

12 A. (B) (2) (i) does, yes.

13 Q. Can you please read the language in
14 Section (B) (2) (i) you are referring to for the
15 record.

16 A. Shall I refer to 2 and then go into i?

17 Q. Whatever language --

18 A. Provisions under which the electric
19 distribution utility may implement economic
20 development, job retention, and energy efficiency
21 programs which provisions may allocate program costs
22 across all classes of customers of the utility and
23 those electric distribution utilities in the same
24 holding company system.

25 Q. And isn't it true nothing in that section

1 references the reasonable arrangement rules in either
2 the statute or rule we discussed previously?

3 A. That section does not.

4 Q. And, finally, would you agree that there
5 is nothing in Section (B)(2)(g) which references the
6 reasonable arrangement rules?

7 A. That section does not reference
8 reasonable arrangement rules.

9 Q. And isn't it true you can't identify any
10 Commission decision which has rejected an electric
11 security plan provision for failure to meet the
12 Commission's reasonable arrangement rules?

13 A. Not to my knowledge.

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

16 Thank you, Mr. Haugh.

17 EXAMINER WALSTRA: Thank you. Just go
18 around the room.

19 MS. WHITFIELD: Well, I think Ms. Bojko
20 was wanting to be second. I do not anticipate I will
21 have questions after.

22 MS. BOJKO: Thank you, your Honor.

23 - - -

24

25

CROSS-EXAMINATION

By Ms. Bojko:

Q. Good afternoon, Mr. Haugh.

A. Good afternoon.

Q. Could you turn to page 3 of your testimony, please. On line 18 of your testimony, you mention the word "diversity." Do you see that?

A. Line 18?

Q. Yes.

A. Yes.

Q. And, Mr. Haugh, could you turn yours back on, please. Thank you.

In your testimony you are not testifying to the diversity issue; is that correct?

A. Correct.

Q. And could you turn to page 4, please. Starting on line 3 you discuss "signatory parties." For your testimony are you referring to just signatory parties, or are you also including consideration of nonsignatory parties?

A. In Q and A7, I lay out the parties that have signed and then also the parties that have agreed not to oppose.

Q. And the conclusions and recommendations in your testimony, are you opining on the

1 nonsignatory parties as well as the signatory
2 parties?

3 MR. MICHAEL: Object to form, your Honor.
4 I am not entirely sure what Counsel means when she is
5 asking if she is opining on the nonopposing parties.

6 MS. BOJKO: I'll clarify, your Honor.

7 EXAMINER WALSTRA: Thank you.

8 Q. On line 3 you say "Who are the signatory
9 parties," but then you go on to mention the
10 nonsignatory parties; is that correct?

11 A. Yes.

12 Q. So throughout the rest of your testimony,
13 when you draw certain conclusions, are you only
14 drawing conclusions with the signatory parties, or
15 are you also drawing certain conclusions with the
16 nonsignatory parties?

17 A. Certain opinions on the nonsignatory
18 parties who agreed not to oppose who are receiving
19 benefits from the settlement.

20 Q. Thank you. And isn't it true that the
21 amended stipulation is either supported by or not
22 opposed by several customer groups?

23 A. There are several parties that agree not
24 to oppose.

25 Q. That are customer groups?

1 A. That are customer groups, yes.

2 Q. And, similarly, there are several parties
3 that have either supported or agreed to not oppose
4 that are specific customers of Dayton Power and
5 Light; is that correct?

6 A. Meaning individual customers?

7 Q. Yes.

8 A. Yes.

9 Q. And there's also a municipal customer
10 that has agreed not to oppose; is that correct?

11 A. By "municipal," do you mean the City of
12 Dayton?

13 Q. Yes.

14 A. Yes.

15 Q. And there are also groups that provide
16 services to or advocate for low-income groups that
17 have signed the settlement; is that correct?

18 A. I'm not positive on all of the interests
19 of all of the groups that have signed.

20 Q. You would agree with me that Edgemont
21 Neighborhood Coalition and the Ohio Partners for
22 Affordable Energy are signatory to the stipulation?

23 A. They are both signatory parties, yes.

24 Q. And you would also agree with me that
25 there are suppliers that have signed in support of

1 the stipulation; is that correct?

2 A. Energy suppliers, you mean?

3 Q. Sure.

4 A. Yes.

5 Q. Thank you for that clarification. And
6 there is also a demand response entity that has
7 agreed to not oppose the stipulation; is that
8 correct? An entity that provides demand response
9 services as well as other services.

10 A. If by -- do you mean EnerNOC?

11 Q. Yes.

12 A. I would have to refresh. I don't believe
13 they signed the -- did they agree not to oppose? Let
14 me refer.

15 Q. They are listed on line 11 of your
16 testimony as a nonopposing party.

17 A. Yes, I saw. I didn't see them when I --
18 originally when I was looking at my testimony. Yes,
19 they are. I apologize for that.

20 Q. And on line 20 still on page 4, you talk
21 about the TCRR-N pilot program that you discussed
22 with Mr. Alexander, correct?

23 A. Yes.

24 Q. And that is referencing page 14 and 15 of
25 the amended stipulation, correct?

1 A. Take a look at the stipulation. I can
2 verify that.

3 Q. Excuse me. It goes to page 17, 14
4 through 17.

5 A. I agree with that.

6 Q. And isn't it true that the TCRR-N is
7 available -- pilot program is available to all
8 shopping customers, subject to the limitation of 50
9 accounts?

10 A. It would have voltage level customers.

11 Q. And it's open to any voltage level
12 customer that's a shopping customer that would like
13 to take advantage of the pilot program, correct?

14 A. That's my understanding.

15 Q. And isn't it also true that it's
16 available to eligible customers that are either new
17 or existing customers that have new or expanding
18 accounts subsequent to the implementation of the
19 pilot program?

20 A. What do you mean by "new or existing"? I
21 guess I am not sure what you were referring to.

22 Q. Sure. I will direct you to page 16 of
23 the amended stipulation. There are no line numbers,
24 but I would ask you to look in about the middle of
25 the paragraph, says that subject to the maximum of 50

1 accounts, new accounts of new customers and/or new
2 and expanded accounts of an existing pilot
3 participant shall also have the right to make such
4 election regardless of whether the accounts are known
5 or in existence by the deadline specified in the
6 stip.

7 A. Yes, that is what the stipulation says.

8 Q. And you're not disputing here today that
9 customers -- eligible customers that do agree to
10 participate could actually benefit from the pilot
11 program; is that correct?

12 A. No, I am not disputing that.

13 Q. And if we could turn to page 5 of your
14 testimony, line 12, you talk about the term of the
15 pilot program. Isn't it true that the pilot is for a
16 limited time period? It's for the duration of the
17 ESP?

18 A. Yes. And I state that that's too long
19 for a pilot program.

20 Q. And you are aware that the term of the
21 ESP is six years?

22 A. Yes.

23 Q. Could you turn -- I want to turn your
24 attention to the economic development rider that you
25 discussed with Mr. Alexander. I believe it starts on

1 page 10 of your testimony. 9, sorry. Thank you.

2 A. Yes, I'm there.

3 Q. Isn't it true that the incentives that
4 you reference in your testimony for certain customers
5 are on a per kWh basis?

6 A. Yes, I state that in line 12 of page 9.

7 Q. And isn't it true that incentives for
8 certain customers on a per kWh basis have been
9 previously approved by this Commission?

10 A. Meaning that the Commission's approved
11 volumetric discounts for customers?

12 Q. Yes.

13 A. Yes.

14 Q. And the Commission has approved such
15 credits such as interruptible credits and the
16 automaker credits; is that correct?

17 A. I know that the -- definitely the
18 interruptible credits I can agree on.

19 Q. Would you turn to page 12 of your
20 testimony, please. On line 7 you reference a case
21 05-376. Do you see that?

22 A. Yes.

23 Q. Do you know the date of the order on
24 remand that you referenced there?

25 A. I believe it was -- I don't know the

1 exact date. It would have been, I believe, early
2 2015.

3 Q. Would you agree that, subject to check,
4 it could be December -- or February 11, 2015?

5 A. That sounds reasonable.

6 Q. And isn't it true, subsequent to the date
7 of that order or subsequent to February 11, 2015, the
8 Commission has approved settlements containing
9 various types of payments to parties?

10 A. I'm trying to -- trying to recall if
11 the -- if there are final opinions and orders on
12 those cases.

13 Q. Let me help you. Let's walk through a
14 couple. Isn't it true that the Commission has
15 approved a settlement containing various types of
16 payments to parties in the FirstEnergy ESP case,
17 14-1297, with an order issued March 31, 2016, which
18 was affirmed on rehearing, the last time was October
19 12, 2016?

20 A. I'm trying to remember. I get some of
21 the ESPs mixed up, so I am trying to remember the
22 cash payments. Yes, there were.

23 Q. And isn't it true that in the AEP energy
24 efficiency portfolio filing of 16-574, the
25 stipulation contained payments to various groups, and

1 that one was approved January 18, 2017?

2 A. I don't know that one. I was not
3 involved in that case.

4 Q. And isn't it true that the AEP purchase
5 power agreement rider, 14-1693, that in that case the
6 Commission approved a settlement that contained
7 various types of payments to customers which was
8 approved on March 31 -- March 31, 2016, and affirmed
9 by subsequent entry on hearing, the last being
10 April 5, 2017?

11 A. On that particular case, I'm sorry, I
12 can't recall if those were -- a lot of the issues in
13 that were punted to another -- to a subsequent
14 hearing, so I'm not sure if those -- I can't
15 necessarily say -- agree that there were -- that
16 those were approved in that case.

17 Q. Do you recall in that case there were
18 payments to the Ohio Hospital Association as well as
19 a discount on feed charges to the Ohio Hospital
20 Association?

21 A. Off the top of my head, I can't recall
22 that.

23 Q. You wouldn't be surprised if provisions
24 like that were contained in the settlement in the AEP
25 PPA case, would you be?

1 A. There were a lot of settlements. As I
2 said, I am not sure if they were in that case or if
3 they were moved to the subsequent PPA expansion.

4 Q. So, I guess overall though, you would
5 agree even though you can't sit here today
6 necessarily remembering every provision in every
7 case, you would agree subsequent to February 11,
8 2015, that there have been cases with -- that the
9 Commission has approved settlements containing
10 various payments to parties; is that fair?

11 A. It lists -- there was only one I could
12 recall there were actual cash payments made that was
13 approved in that case.

14 Q. In which case?

15 A. The FirstEnergy ESP case.

16 Q. So you are agreeing with me that you know
17 of at least one where --

18 A. You said several. There's one -- there
19 is only one that I can agree to.

20 Q. Let's talk about another one. What about
21 the AEP global settlement, that's the common name for
22 that one, and it's 10-2929, and I believe that you
23 participated in that case? And do you recall in that
24 case that there were payments to various parties
25 under the settlement that was approved by the

1 Commission on February 23, 2017?

2 A. I believe there were refunds. I don't
3 believe there were cash payments in that case. There
4 were refunds of costs that were recovered in a
5 previous case.

6 Q. And there were payments that went to
7 customers in the form of either a reduction to a
8 particular rider or credits, one-time credits to
9 bills?

10 A. The difference with that is those were
11 refunds of charges that were already collected by AEP
12 and then refunded back to customers. These in
13 particular are cash payments to signatory parties.

14 Q. I think you are referring to the FAC
15 refund but there were other provisions in there that
16 either had a reduction to the PIRR for customers that
17 were signatory parties to the settlement. Do you
18 recall that?

19 A. I thought the -- my -- I'll reference
20 this by saying most of my focus was on residential
21 customers and the refunds they received, and I can't
22 recall payments to only certain customers or customer
23 groups in that particular case.

24 Q. You can't recall?

25 A. No.

1 EXAMINER PRICE: Isn't it true OCC was a
2 signatory party to that stipulation?

3 THE WITNESS: Yes.

4 Q. (By Ms. Bojko) And you were a witness in
5 the AEP portfolio -- PPA case, weren't you?

6 A. Yes.

7 Q. You just don't recall what the exact
8 settlement provisions were for nonresidential
9 customers; is that fair?

10 A. By AEP PPA, the 14-1693?

11 Q. Yes.

12 A. And, I'm sorry, your question again?

13 Q. You are just not -- or you don't recall
14 here today on the stand the -- the credits that may
15 or may not have been given to nonresidential
16 customers for their signatories -- for their
17 signatures.

18 A. Correct. As I said, some were moved onto
19 another case and not necessarily approved in that --
20 in the order in that case.

21 Q. And you are aware, sir, that AEP
22 currently has an interruptible credit that is given
23 to customers that participate in an interruptible
24 program?

25 A. Yeah. I believe that was from their

1 second ESP case.

2 Q. Right. And that was approved by the
3 Commission?

4 A. Yes.

5 Q. And that's a volumetric credit; is that
6 correct?

7 A. I believe it's demand based.

8 Q. Thank you. Demand-based credit?

9 A. Yes.

10 Q. Based on demand. It's a per kWh charge
11 or credit; is that correct?

12 A. Yes.

13 EXAMINER PRICE: Before we leave this
14 topic, I just wanted to clarify one thing for the
15 record. The case you discuss on page 12, line 7,
16 05-376.

17 THE WITNESS: Yes.

18 EXAMINER PRICE: You discuss the
19 settlement.

20 THE WITNESS: Yes.

21 EXAMINER PRICE: OCC was a signatory
22 party to that settlement as well, weren't they?

23 THE WITNESS: Yes.

24 EXAMINER PRICE: Thank you.

25 MS. BOJKO: Thank you. I have no further

1 questions. Thank you, Mr. Haugh.

2 EXAMINER WALSTRA: Thank you.

3 MS. WHITFIELD: I have no additional
4 questions beyond that. Thank you.

5 - - -

6 CROSS-EXAMINATION

7 By Mr. Ireland:

8 Q. Good afternoon, Mr. Haugh.

9 A. Good afternoon.

10 Q. Jeff Ireland for the company. Just so I
11 am clear, you have no opinions on the financial
12 integrity of DP&L; is that right?

13 A. Correct.

14 Q. No opinions on the financial integrity of
15 DPL Inc.?

16 A. Correct.

17 Q. And you, as part of your testimony, have
18 not made any analysis of DP&L's ability to provide
19 safe or reliable service; is that right?

20 A. Correct.

21 Q. And I believe you said this earlier, but
22 just so we have it under oath, you are not an
23 attorney, right?

24 A. Correct.

25 Q. You are offering testimony as to the

1 second prong of the three-prong test; is that right?

2 A. Yes.

3 Q. Which has to do with the public interest
4 and you would agree that the public interest includes
5 all customers, does it not?

6 A. Yes.

7 Q. It's more than just residential
8 customers, true?

9 A. True.

10 Q. And you would agree that this stipulation
11 affects the interests of residential customers in a
12 positive way, right?

13 A. Not necessarily.

14 Q. Well, do you recall being deposed a week
15 or so ago?

16 A. Yes.

17 Q. Do you have a copy of your deposition
18 with you?

19 A. I do not.

20 MR. IRELAND: May I approach the witness,
21 your Honor?

22 EXAMINER WALSTRA: You may.

23 MR. MICHAEL: Do you have any more, Jeff,
24 or should I go up to the witness and read over his
25 shoulder?

1 MR. IRELAND: You can read over my
2 shoulder.

3 Q. Directing your attention, Mr. Haugh, to
4 page 16 of your deposition.

5 A. 16 of the condensed pages?

6 Q. Yeah. Page 16 condensed or
7 non-condensed.

8 A. Each page is defined, and then at the
9 bottom there is also a page. I wanted to make sure I
10 was on the same.

11 Q. It starts at the top. The question at
12 the top is "When you say customers."

13 A. Yes.

14 Q. Okay. Page -- or line 12.

15 A. Yes.

16 Q. The question was "Do you think this
17 stipulation affects the interest of any residential
18 customers in a positive way?

19 "Answer: Yeah. There are some positives
20 to this.

21 "Question: What are they?

22 "Objection.

23 "Answer: I find that the auctions for
24 the Standard Service Offer are a benefit to customers
25 switching from a self-supplied generation to full

1 auctions beneficial to the customers." Did I read
2 that correctly?

3 A. Yes.

4 Q. Now, on page 3 of your testimony you
5 refer to -- you refer to the -- that the PUCO -- PUCO
6 should also routinely consider whether the parties to
7 the stipulation represent diverse interests. Do you
8 see that?

9 A. Yes.

10 Q. And am I to understand what you just said
11 in response to Ms. Bojko that you have no opinion in
12 this proceeding as to whether or not there is
13 diversity among the parties to the stipulation?

14 A. Yes.

15 Q. So okay. Now, your testimony is that the
16 TCRR-N is -- is not set up in a way as a traditional
17 pilot program should be; is that right?

18 A. That's correct.

19 Q. In your view, a traditional pilot program
20 is a small-scale, short-term program used to
21 determine how a larger program may work in the
22 future; is that right?

23 A. That's -- that's my testimony on page 5,
24 yes.

25 Q. And you have in your -- prior to working

1 with OCC, you worked for a company called Just
2 Energy; is that right?

3 A. Correct.

4 Q. And in that capacity, you worked on
5 planning and implementing pilot programs; is that
6 right?

7 A. Correct.

8 Q. And one of the ones that you worked on
9 with Just Energy was a pilot program that included
10 the distribution of thermostats to retail customers
11 in Ohio, Michigan, Indiana, and Illinois; is that
12 right?

13 A. Very simplified, yes.

14 Q. Well, I am kind of a simple guy, so I
15 appreciate that. That was certainly a much larger
16 pilot program than the one that's described on
17 pages 14 to 17 of this stipulation; is that right?

18 A. Yes.

19 Q. So a pilot program can be very, very
20 large; would you agree with that?

21 A. I would say that it -- based on the total
22 number of customers in those four states, as a
23 proportion, might not be considered large.

24 Q. Well, it was tens of thousands of
25 participants in that pilot program, right?

1 A. Out of tens of millions of customers.

2 Q. And you also believe that the pilot
3 program should be limited in time, right?

4 A. Correct.

5 Q. And this one is, right?

6 A. At a time longer than I would suggest.

7 Q. Well, you would agree a pilot program may
8 take a few years to evaluate, right?

9 A. Yes. And I state a few years is how long
10 this should last.

11 Q. So a few years could be five or six years
12 or not?

13 A. I would consider a few to be two to three
14 as I state in my testimony.

15 Q. One of the things you -- criticisms of
16 this pilot program is that it does not benefit all
17 customers; is that right?

18 A. Yes.

19 Q. And would you agree that benefiting all
20 customers is not an absolute requirement for a pilot
21 program?

22 A. If I could strike that. I state that it
23 should benefit all customers.

24 Q. Right. But do you believe benefiting all
25 customers is an absolute requirement for a pilot

1 program?

2 A. All customers, it's -- all pilot programs
3 are different, so they should be evaluated
4 differently based on their own accord.

5 Q. So every pilot program needs to be
6 evaluated on its own merits; would you agree with
7 that?

8 A. Yes.

9 Q. And would you agree that this rider is
10 subject to review by the staff of the Public
11 Utilities Commission?

12 A. I don't believe it is.

13 Q. You don't believe it is.

14 A. I would have to review the stipulation to
15 verify that.

16 Q. Well, it doesn't say that in the
17 stipulation, would you agree, that riders are
18 generally reviewable by the staff of the Public
19 Utilities Commission?

20 A. I don't know that all are. And this, it
21 is not specifically laid out in this stipulation the
22 staff will review.

23 Q. So your answer is "I don't know"?

24 A. Yes.

25 Q. Now, at the bottom of page 6 of your

1 testimony, you talk about the consolidated billing.

2 A. Yes.

3 Q. Do you see that?

4 A. Yes.

5 Q. And you testify that generally -- you
6 qualify your answer by saying "Generally, no." You
7 would agree that some customers may desire
8 consolidated billing; is that right?

9 A. Some may.

10 Q. And for those customers this would be a
11 benefit; is that right?

12 A. If they desire it, then it would be a
13 benefit to them.

14 EXAMINER PRICE: Mr. Haugh -- excuse me,
15 Mr. Ireland. I just had one question. Maybe not.
16 On page 7 at line 4, you say "I know in the case of
17 residential customers the majority of those customers
18 would prefer to get one bill from the utility." How
19 do you know that?

20 THE WITNESS: From my work at different
21 marketing companies.

22 EXAMINER PRICE: You've spoken with every
23 residential customer?

24 THE WITNESS: It was a -- there was
25 research that was done that -- regarding customers on

1 their desire to be billed and how we were trying to
2 market products to different customers, how we would
3 bill customers for those products.

4 EXAMINER PRICE: Survey research?

5 THE WITNESS: I can't remember the
6 details of it.

7 EXAMINER PRICE: Did you conduct the
8 survey research?

9 THE WITNESS: I did not conduct the
10 survey. It was --

11 EXAMINER PRICE: Do you have a copy of
12 the survey?

13 THE WITNESS: I do not.

14 EXAMINER PRICE: So your basis is a
15 survey which you did not conduct; you do not have a
16 copy with you today.

17 THE WITNESS: By saying "survey" or
18 "research," it was -- it was work that was done at
19 a -- while I was with the marketing company.

20 EXAMINER PRICE: Have you done any work
21 while with Ohio Consumers' Counsel to determine
22 residential customers, whether that fact statement is
23 true with respect to residential customers?

24 THE WITNESS: No. It's -- it's -- as I
25 said, it was something that was considered while --

1 while marketing to residential customers.

2 EXAMINER PRICE: Isn't it true you really
3 don't know this? You simply think this to be true.

4 THE WITNESS: It was provided in research
5 while I was with a marketing company. I don't have
6 the research with me. It was a -- and it was we
7 based a lot of our marketing programs off that
8 information we received.

9 EXAMINER PRICE: Fair enough.

10 MR. IRELAND: I was just going to get to
11 that, your Honor. I would like to ask --

12 EXAMINER PRICE: You can ask all the
13 follow-ups you want.

14 MR. IRELAND: Well, no. You did a very
15 fine job. Thank you.

16 Q. (By Mr. Ireland) Do you take service from
17 DP&L?

18 A. I do not.

19 MR. IRELAND: Well, then I would move to
20 strike, your Honor, the portion of his testimony that
21 begins on page 7, line 4 to line 9, because there is
22 absolutely no basis for the statement as to what he
23 knows with residential customers. He doesn't have a
24 survey. Whatever information was general came from
25 a -- his prior employment. And I suppose if he was a

1 DP&L customer, he might be able to offer an opinion
2 as a customer, but he's not.

3 MR. MICHAEL: Your Honor, Mr. Haugh is
4 testifying as an expert. As your Honor is well
5 aware, experts are allowed to testify based on their
6 experience and working in the industry. That's what
7 makes them an expert. They don't have to shed what
8 they know through the course of a 20-year career when
9 they walk in these hearing room doors.

10 The Commission obviously has the
11 opportunity to weigh that testimony to the degree it
12 wants to, but it's certainly appropriate for an
13 expert to testify based on what they know based on
14 their experience. Mr. Haugh clearly testified that
15 he was engaged with a marketing company. One of the
16 things they did was market research as to how
17 customers felt about those things. So he has
18 personal experience with the results of those surveys
19 and how the market with whom he worked treated that
20 information.

21 EXAMINER PRICE: But how can Mr. Ireland
22 cross-examine him on the results of those surveys if
23 it's just he does not identify the survey and brought
24 the instrument forward with him? Maybe there are
25 flaws in the survey that Mr. Ireland would like to

1 point out.

2 MR. MICHAEL: He can ask all the
3 questions he wants, but as I said, your Honor, an
4 expert can testify based on their experience. That's
5 part of what makes them an expert. If he wants to
6 probe their experience and call it into question,
7 that's fine.

8 MR. OLIKER: Your Honor, if I may be
9 heard on this matter as well? Actually to some
10 extent, I support Mr. Michael, and I would only
11 strike the words "from the utility" on line 5 which,
12 I think, is inconsistent with his testimony where I
13 think he said they want to receive one bill.

14 MR. MICHAEL: I appreciate the support,
15 but I don't know what you said otherwise.

16 MR. OLIKER: We can strike the sentence
17 though.

18 MR. IRELAND: Your Honor, certainly an
19 expert can come in and testify about their
20 experience, but they can't just say I have had this
21 experience and assert that I know something without
22 any basis for it whatsoever.

23 EXAMINER WALSTRA: I'm going to grant in
24 part and deny in part. I will strike the lines --
25 the sentence beginning on line 4 and going and ending

1 on line 6. I will allow him to state his opinion
2 otherwise. Go ahead.

3 MR. IRELAND: Thank you, your Honor.

4 MR. ALEXANDER: Your Honor, one
5 clarifying. Are you starting on line 4 with the word
6 "I"?

7 EXAMINER WALSTRA: Yes.

8 MR. ALEXANDER: Thank you, your Honor.

9 Q. (By Mr. Ireland) So one of the things
10 Mr. Alexander handed you was a copy of Ohio Revised
11 Code Section 4928.143. Do you recall that?

12 A. Yes.

13 Q. And just so we are clear, you would agree
14 that this is a policy that should be taken into
15 consideration in evaluating from your perspective?
16 It's a policy that should be taken into consideration
17 in evaluating the third prong of the three-part test;
18 is that right?

19 A. I think the Commission can take whatever
20 they want to into consideration when determining the
21 merits of an ESP.

22 Q. And certainly part of the -- what they
23 should take into consideration is 143(2), the plan
24 may provide or include, without limitation, any of
25 the following, and then subsection little (i), that

1 has to do with the provision under which the utility
2 may implement economic development, job retention,
3 and energy efficiency programs. You would agree with
4 that, right?

5 A. I returned mine back to Mr. Alexander,
6 but if it's in that section, then the Commission
7 has -- can weigh however they would like.

8 Q. Now, do you consider Honda, Kroger, and
9 Miami Valley Hospital to be large employers?

10 A. I don't know the number of employers that
11 they have.

12 Q. You don't know the number of employees?

13 A. Employees, correct. They each have one
14 employer, I guess.

15 Q. Let's assume that they -- that they do
16 have a lot of employees and that they -- that they
17 are large employers. Do you agree that if a large
18 user of electricity receives an electric security
19 discount, it may make that company more competitive?

20 A. I can't say that.

21 Q. So you don't know?

22 A. I'm -- if you could reread the question.

23 Q. Sure.

24 A. Make sure I give a correct answer.

25 Q. Let's assume Honda, Kroger, and Miami

1 Valley are large employers. They have a significant
2 number of employees. Do you agree that if a large
3 user of electricity with a large number of employees
4 receives an electric security discount, that it may
5 make that company more competitive?

6 A. Not necessarily.

7 Q. So you disagree? It would not make that
8 company more competitive?

9 A. There are a lot of factors that would go
10 into the "competitive," so I can't say an economic
11 discount or an economic -- a discount on electricity
12 rates would necessarily make them more competitive.

13 Q. Well, a discount on electricity rates is
14 certainly going to make more money available to them
15 for that business; is that fair?

16 A. In theory it could.

17 Q. Why that -- why do you say "in theory?"
18 Isn't that the practice if you are paying less for
19 electricity, don't you have more money available to
20 you?

21 MR. MICHAEL: Objection, argumentative.

22 EXAMINER WALSTRA: Overruled.

23 A. You are taking one -- one -- one sliver
24 of the financial -- the financial of a company, so I
25 can't necessarily say that an electricity discount

1 will automatically. There are other variables that
2 would affect the profitability and cash flows of the
3 company.

4 Q. Well, paying less money for electricity
5 is going to have a positive impact on cash flow, is
6 it not?

7 A. It will reduce their expenses.

8 Q. And reducing the expenses may mean that
9 there's more money available to the company to hire
10 employees; is that right?

11 A. It's possible.

12 Q. And it's possible that paying less money
13 for electricity may free up money for capital
14 investments; is that right?

15 A. It can -- yeah. There's -- once again,
16 with the qualifications there are lots of -- I will
17 state that it can free up -- it can reduce our
18 expenses which after that it's unknown what will
19 happen with the company and what they will do.

20 Q. Turning lastly to page 12 of your
21 testimony, you have this testimony about noncommodity
22 billing and your objection that the settlement
23 requires the staff to request the Commission to
24 conduct a rules review prematurely, I think is what
25 you are really saying there; is that right?

1 A. Basically, yes.

2 Q. And you don't -- you are not aware of any
3 prohibit -- prohibition that would -- against the
4 staff doing so at its prerogative, right?

5 A. No. I am saying more traditional
6 regulatory policy is a five-year review.

7 MR. IRELAND: Let me have one second.

8 EXAMINER WALSTRA: We'll go off the
9 record and take a 10-minute recess.

10 (Recess taken.)

11 EXAMINER WALSTRA: We'll go back on the
12 record.

13 Mr. Pritchard.

14 MR. PRITCHARD: Thank you, your Honor.

15 - - -

16 CROSS-EXAMINATION

17 By Mr. Pritchard:

18 Q. Good afternoon, Mr. Haugh.

19 A. Good afternoon.

20 Q. I have some follow-up questions on your
21 criticisms of the TCRR-N pilot. Will you turn to
22 page 5 of your testimony.

23 A. I'm there.

24 Q. And beginning on page -- or line 10 and
25 continuing down for a few lines, your criticism is

1 the pilot program fails to identify the objectives or
2 benefits of the program, correct?

3 A. Correct.

4 Q. Do you have the stipulation in front of
5 you?

6 A. I do.

7 Q. Will you turn to page 14 of the
8 stipulation.

9 A. I'm there.

10 Q. Can I draw your attention to the third
11 sentence under subparagraph c on that page? Do you
12 see the sentence that begins "More specifically"?

13 A. Yes.

14 Q. And that sentence continues on "the
15 purpose of this pilot program is to explore whether
16 certain customers could benefit from opting out of
17 DP&L's TCRR-N" and then it continues for the rest of
18 that page and on to the top of page 15, correct?

19 A. Yes.

20 Q. That sentence? And, now, I want to
21 explore a little bit your understanding of how
22 transmission costs are assigned and billed. PJM --
23 let me back up.

24 It's your understanding, following up
25 with Mr. Alexander's questions, that network

1 integration transmission service, or NITS, is
2 included in the TCRR-N, correct?

3 A. It is nonbypassable, correct.

4 Q. And so that PJM line item is in that --
5 in the nonbypassable transmission rider, correct?

6 A. Yes.

7 Q. And it's your understanding that PJM
8 allocates NITS costs on a single coincident peak
9 basis, correct?

10 A. Yes.

11 Q. And it is your understanding that DP&L's
12 nonbypassable transmission rider is billed on monthly
13 billing demand, correct?

14 A. Correct.

15 Q. And do you know how DP&L calculates
16 monthly billing demand?

17 A. I believe that's on a 1 CP.

18 Q. Have you previously reviewed DP&L's
19 TCRR-N tariff?

20 A. A while -- not recently.

21 Q. Would it refresh your recollection of
22 what's in that tariff if I showed you a copy of the
23 tariff?

24 A. Yes.

25 MR. PRITCHARD: May I approach, your

1 Honor?

2 EXAMINER WALSTRA: You may.

3 MR. PRITCHARD: I'm not marking this yet.

4 Q. (By Mr. Pritchard) I would like to draw
5 your attention, Mr. Haugh, to the bottom of page 3 of
6 4. Are you there?

7 A. I'm there.

8 Q. Have you reviewed the language there
9 about the determination of kilowatt billing demand?

10 A. Yes.

11 Q. And does this refresh your recollection
12 that DP&L's billing demand for the TCRR-N is further
13 established by cross-reference to DP&L's distribution
14 tariffs?

15 A. Yes.

16 Q. Have you previously reviewed DP&L's
17 distribution tariffs?

18 A. At some -- yes, at some point I have.

19 Q. Do you recall under the distribution
20 tariffs how monthly billing demand is calculated?

21 A. Off the top of my head -- I'm sure you
22 have it for me.

23 Q. Okay. Would it refresh your recollection
24 if I showed you a copy of DP&L's distribution tariff?

25 A. That would be appreciated.

1 Q. Mr. Haugh, I have handed you sheets D21
2 and D22 from DP&L's distribution tariff. Do you have
3 those in front of you?

4 A. I do.

5 Q. And sheet D21 is for primary substation
6 customers, correct?

7 A. Yes.

8 Q. And beginning on page 2 of 3 of sheet
9 D21, there's a heading labeled "Determination of
10 Kilowatt Billing Demand," correct?

11 A. Yes.

12 Q. And under this have you had an
13 opportunity to review this section of the tariff
14 sheet?

15 A. I have.

16 Q. And under this section of DP&L's
17 distribution tariff, it provides three options for
18 calculating a primary substation customer's billing
19 demand, correct?

20 A. Yes.

21 Q. And it is the greater of the three,
22 correct?

23 A. Yes.

24 Q. And the first item is offpeak which is
25 further defined as 75 percent of the greatest demand

1 during and it lists the offpeak times, correct?

2 A. Yes.

3 Q. And item No. 2 is onpeak and that's
4 defined as 100 percent of the customer's demand
5 during the billing month at any of the non-offpeak
6 hours, correct?

7 A. Yes.

8 Q. And item No. 3 is 75 percent of the
9 customers offpeak or onpeak demand as used for
10 billing, and then it lists the prior period of time
11 where that would be applicable -- let me strike this
12 question.

13 Item No. 3 specifies that monthly billing
14 demand would be 75 percent of the customer's greatest
15 offpeak or onpeak demand as used in billing in the
16 months of June, July, August, December, January,
17 February during the past 11 months, correct?

18 A. Yes.

19 Q. Switching topics slightly but still
20 within the TCRR-N pilot, are you aware under PJM's
21 open access transmission tariff whether retail
22 customers can directly access that transmission
23 tariff?

24 A. There's some conditions but, yes, they
25 can.

1 Q. Following up with a couple of questions
2 from Mr. Alexander on the implementation of DP&L's
3 nonbypassable TCRR-N as part of the last ESP. You
4 indicated that prior to the second ESP, the
5 transmission costs were bypassable by shopping
6 customers, correct?

7 A. All transmission costs, did you say?

8 Q. Yes.

9 A. Yes, yes, they were.

10 Q. And with the implementation of the second
11 ESP and the TCRR-N, what was defined as
12 nonmarket-based transmission costs became
13 nonbypassable, correct?

14 A. Correct.

15 Q. And you are aware that with the
16 implementation of the TCRR-N that there was a cost
17 shift among customers, correct?

18 A. Did you say with the advent of the TCRR-N
19 there was cost shift?

20 Q. Correct.

21 A. I didn't do that analysis, but logic
22 would say there would be.

23 Q. And one of your criticisms of the pilot
24 is you indicate on page 5 that the pilot should
25 not -- should provide benefits to participants but

1 not unnecessarily shift costs to nonparticipants,
2 correct?

3 A. Yes.

4 Q. Would any shift in costs fail your
5 proposal?

6 A. There has to be a cost/benefit analysis
7 that's done. If there are shifting of costs, do the
8 benefits outweigh the costs that are being shifted?

9 Q. So under -- following up on your answer,
10 would any shift in costs from customers not
11 participating in the pilot pass your proposed test?

12 A. It's possible.

13 Q. And also on page 5 you criticize the
14 pi -- the TCRR-N pilot as not being set up by what
15 you categorize as a traditional pilot, correct?

16 A. Yes.

17 Q. Is your criticism there that it's not
18 available to every single customer in DP&L's service
19 territory?

20 A. No. As I stated, the pilot program
21 should have a limited amount of participants.

22 Q. Are you aware that a group of industrial
23 customers previously filed a complaint at FERC in
24 Case EL16-10 that complained about AEP Ohio's
25 nonbypassable transmission charge?

1 A. I'm vaguely aware of that.

2 Q. Are you aware whether the complaint
3 challenged the lawfulness of a nonbypassable retail
4 transmission charge that used monthly billing to
5 determine -- determinants that were different than
6 the way PJM billed for network integration
7 transmission service costs?

8 A. I don't know the details of that.

9 MR. PRITCHARD: Your Honor, at this time
10 I would like to mark as IEU-Ohio Exhibit 1.

11 EXAMINER WALSTRA: So marked.

12 (EXHIBIT MARKED FOR IDENTIFICATION.)

13 Q. Before I ask a couple of questions about
14 this document I handed you -- actually let me just
15 move to marking this document. Mr. Haugh, do you
16 have in front of you what I marked as IEU-Ohio
17 Exhibit 1?

18 A. Yes.

19 Q. And the title of this document is
20 "Response to Industrial Energy Users-Ohio's Motion to
21 Dismiss Complaint by the Office of the Ohio
22 Consumers' Counsel," correct?

23 A. Correct.

24 Q. And this document indicates that the FERC
25 Case No. was EL16-10, correct?

1 A. Yes.

2 Q. And the -- at the top of the page there
3 is a time stamp on this document of January 6, 2016,
4 correct?

5 A. Yeah. I would say it's not what I would
6 traditionally call a time stamp, but I will assume
7 that's --

8 Q. If you will turn to the last page, the
9 certificate of service indicates that it's dated
10 January 6, 2016, and it's signed by counsel for the
11 Office of the Ohio Consumers' Counsel, correct?

12 A. Yes.

13 Q. Are you aware that OCC had intervened in
14 IEU-Ohio's complaint case and filed this responsive
15 pleading?

16 A. Now that I look at it, I have some
17 recollection, but I would not -- I did not work on
18 that particular case at the OCC.

19 Q. Sure. Let me turn your attention to
20 page 3, the second paragraph on the page. And let me
21 know when you are there.

22 A. Second paragraph on page 3?

23 Q. Correct.

24 A. I'm there.

25 Q. Let me know if I read this correctly.

1 "This Complaint raises serious concerns regarding the
2 ability of retail customers and CRES providers in
3 Ohio to access wholesale transmission services on the
4 PJM system at Commission-approved Tariff rates." Did
5 I read that correctly?

6 A. That is correct.

7 Q. And if you look down two sentences
8 further, do you see the sentence beginning "Denial"?

9 A. Yes.

10 Q. Let me know if I read this correctly.
11 "Denial or dismissal of this complaint may also
12 require Ohio retail customers, either directly or
13 through CRES providers, to pay more for transmission
14 services than the filed rate authorized under the PJM
15 Tariff." Did I read that correctly?

16 A. No. "Denial or dismissal of the
17 complaint," not "this complaint." Other than that
18 everything was correct.

19 Q. Thank you.

20 MR. MICHAEL: Nice.

21 Q. And turning to the last sentence on that
22 page that begins with "This," do you see that
23 sentence?

24 A. Second to the last word?

25 Q. Yes.

1 A. Yes.

2 Q. Let me know if I read this sentence
3 correctly. "This is because the Ohio program bases
4 charges for wholesale transmission services on a
5 method that departs from the 1 CP method approved in
6 PJM's Tariff." Did I read that correctly?

7 A. Yes.

8 Q. So it's fair to say as between your
9 opposition to the TCRR-N pilot in this proceeding and
10 your advocacy before the Federal Energy Regulatory
11 Commission, that the Office of the Ohio Consumers'
12 Counsel has a fairly fluid position on the scope of
13 an appropriate -- let me just strike that whole
14 question.

15 MR. MICHAEL: I was going to object to it
16 anyway.

17 Q. I want to turn your attention to the EDR
18 section of your testimony. Drawing your attention to
19 page 7.

20 A. I'm there.

21 Q. Here you -- you critique Section IV of
22 the stipulation, correct?

23 A. In question and answer 14? Yes.

24 Q. And your criticism is that the economic
25 development rider does not follow Commission rules

1 and practices for reasonable arrangements, correct?

2 A. Yes.

3 Q. And in questions posed by Mr. Alexander,
4 you indicated that the applicable Commission rules
5 were in Chapter 38 of the Commission's rules,
6 correct?

7 A. 4901.138.

8 Q. And you understand that there are
9 different kinds of arrangements specified in that
10 chapter of the Commission's rules, correct?

11 A. Yes.

12 Q. The only reasonable arrangements rules
13 that you looked at were regarding economic
14 development arrangements, correct?

15 A. Yes.

16 Q. You would agree with me that part IV of
17 the stipulation recommends the Commission authorize a
18 credit to customers, correct?

19 A. If I could just take a second to look at
20 Section IV real quick.

21 Q. Sure.

22 A. It's -- did you ask if it was --
23 discusses a volumetric discount for customers for
24 certain customers?

25 Q. That wasn't my question. I can rephrase.

1 A. Please.

2 Q. You would agree with me this section of
3 the stipulation recommends that the Commission
4 authorize a credit for certain customers, correct?

5 A. Correct, yes.

6 Q. And this section of the stipulation
7 specifies criteria that the -- that customers would
8 need to meet to be eligible to receive the credit,
9 correct?

10 A. Yes.

11 Q. For example, in Section IV.1.a.i, it
12 specifies that a single site customer needs to have a
13 demand of 10 megawatts or greater with an average
14 load factor of at least 80 percent, correct?

15 A. Yes. And then lists the number of
16 customers that are eligible for that.

17 Q. And in subparagraph little ii, it --
18 customers available for this credit would have to
19 have a megawatt demand of 4 megawatts or greater,
20 correct?

21 A. Correct.

22 Q. And under iii, subparagraph iii, it's
23 available to businesses headquartered in the State of
24 Ohio that have an aggregate demand of 2 megawatts or
25 greater, correct?

1 A. Yes, that's correct.

2 Q. And jumping back to paragraph 2.i, you
3 would agree with me that this paragraph provides a
4 credit for certain types of business activity,
5 correct?

6 A. It's called an "Automaker Incentive," but
7 it doesn't necessarily -- the definition of it
8 doesn't limit it to automakers.

9 Q. Fair enough. Jumping around a little
10 bit, will you turn your attention to page 11 of your
11 testimony.

12 A. I'm there.

13 Q. You refer to the economic development
14 grant fund as a rebate, correct?

15 A. Yes.

16 Q. Could you provide us with a definition --
17 your definition of what a rebate is in the context
18 you use in your testimony.

19 A. Sure. It's essentially returning or
20 giving to an entity costs that were incurred.

21 Q. And at pages 11 and 12 of the
22 stipulation, under the economic development grant
23 fund section, it said for specific payments, correct?

24 A. Mine are specifically on subsection c.

25 Q. Correct. And subsection c that begins on

1 page 11 and continues to page 12, the stipulation
2 sets forth the specific payments under that part of
3 the economic development grant fund, correct?

4 A. Correct.

5 Q. And all the economic development grant
6 funds A, B, and C are under the provision VI that
7 begins on page 10, correct?

8 A. It's just --

9 Q. Let me rephrase that question. These
10 subparagraphs, A, B, and C, that are or begin on
11 page 11 are under -- are a subset of paragraph VI
12 that begins on page 10, correct?

13 A. Correct, yes.

14 Q. And let me know if I am reading this
15 sentence correctly that begins on the bottom of
16 page 10. "DP&L agrees to make the following economic
17 development payments, which payments shall not be
18 recoverable from customers." Did I read that
19 correctly?

20 A. That is correct.

21 MR. PRITCHARD: Thank you, Mr. Haugh. I
22 have no further questions.

23 THE WITNESS: Thank you.

24 EXAMINER WALSTRA: Mr. Olikar?

25 - - -

CROSS-EXAMINATION

By Mr. Olikar:

Q. Good afternoon, Mr. Haugh.

A. Good afternoon.

Q. Just a few questions for you today.

Let's start with --

EXAMINER PRICE: Matt broke it. You'll just speak out loud.

MR. OLIKER: I am usually pretty loud.

Q. Mr. Haugh, let's start with your background a little bit. Am I correct that earlier you indicated you worked for a retail supplier at one point?

A. More than one.

Q. And that would be Enron?

A. Yes.

Q. Also Integrys?

A. MidAmerican Energy was in between that, yes.

Q. And Just Energy?

A. Correct.

Q. And in that role you held various capacities, correct?

A. Yes.

Q. And one of those capacities was project

1 management, correct?

2 A. Yes.

3 Q. And in that capacity you would have
4 experience regarding billing systems, correct?

5 A. Yes.

6 Q. And also product marketing?

7 A. Yes.

8 Q. And taking another step back to your role
9 at OCC, could you explain your duties as I believe
10 you are Assistant Regulatory Analyst -- or, I'm
11 sorry, Assistant Director of Analytical Services.

12 A. That is my title, yes.

13 Q. Could you explain what your scope is in
14 that capacity.

15 A. Sure. Personnel management, managing
16 case activity, obviously filing expert testimony in
17 cases, reviewing -- reviewing documents that go out
18 that are produced within the company or within the
19 organization.

20 Q. And does that include coordinating with
21 outside experts?

22 A. Yes.

23 Q. In this proceeding were you responsible
24 for reviewing Matthew Kahal's testimony?

25 A. I was not.

1 Q. Have you reviewed it?

2 A. I may have -- I read portions of it. I
3 did not read it front to back, the entire document.

4 Q. Do you remember which portions?

5 A. Honestly, no.

6 Q. Okay.

7 A. I didn't review it in any detail.

8 Q. Now, in your work for retail suppliers,
9 would you agree that you learned that retail
10 suppliers spend potentially millions of dollars to
11 maintain their billing systems?

12 A. Depending on the size, it could reach
13 millions of dollars. It could be tens of thousands
14 with a smaller marketer.

15 Q. And would you agree that those billing
16 systems are necessary simply to interact with a
17 utility's consolidated billing system?

18 A. At a bear minimum, yes, you would need
19 that.

20 Q. And would you agree that the various
21 retail suppliers you worked for had large IT
22 departments?

23 A. Not all.

24 Q. But some did, correct?

25 A. Once again, it's all -- it's all -- you

1 use "large." "Large" is based on it's a -- it's sort
2 of a -- it's got a -- it's all relative, I should
3 say.

4 Q. And in this case would you agree that if
5 a supplier consolidated billing pilot program is
6 approved, that it will require participating retail
7 suppliers to spend their own resources to update
8 their own billing systems? If you know.

9 A. I don't know.

10 Q. And turning to page 7 of your testimony,
11 you indicate currently in DP&L's service territory a
12 retail supplier can either use utility consolidated
13 bill or a dual bill, correct?

14 A. Yes.

15 Q. And in your experience working for a
16 retail supplier, would -- am I correct that based on
17 that experience, a retail supplier would not bill for
18 products using a dual bill because customer
19 enrollment was lower relative to the same product on
20 utility consolidated bills, all else being equal?

21 THE WITNESS: Could you have that
22 question reread, please.

23 (Record read.)

24 A. I'm a little confused by the question.

25 Q. Which part don't you understand,

1 Mr. Haugh?

2 A. I -- what you are asking that there are
3 less -- that less customers would desire dual
4 billing? I am kind of mis -- you are connecting the
5 number of customers, dual billing, utility
6 consolidated billing.

7 Q. Maybe I can ask it this way, Mr. Haugh,
8 given a choice between marketing the same product
9 with a dual bill or utility consolidated bill, in
10 your experience a retail supplier would always choose
11 consolidated billing because a customer is likely to
12 enroll, correct?

13 A. Not necessarily. Some customers don't
14 care if they get one bill or two bills. Others --
15 others specifically only desire one bill. There are
16 a variety of different customers with a variety --
17 variety of different desires.

18 Q. And can you identify instances where a
19 retail supplier that you worked for would choose to
20 utilize a dual bill for a product when utility
21 consolidated billing or supplier consolidated billing
22 was available?

23 A. When I was at Enron, we had a large
24 number of dual bill customers. There were large
25 commercial/industrial customers.

1 Q. And besides the exception you just
2 identified, can you think of any other instances?

3 A. To be honest, I did not -- I was not
4 involved in all billing aspects. That was one that
5 just came to mind.

6 Q. So the answer is no to your knowledge,
7 Mr. Haugh?

8 A. Yeah, I don't know.

9 Q. And turning to your testimony on page 13.

10 A. I'm there.

11 Q. Am I correct that the gist of your
12 testimony is you don't believe any review of
13 noncommodity billing rules should be undertaken until
14 after 2019 or in 2019?

15 A. Traditionally the Commission will start
16 the real review process well before the date. So I'm
17 saying that it should just -- when the rest of the
18 CRES rules are being reviewed is when they should be
19 included in that review.

20 EXAMINER PRICE: If the Commission began
21 consideration of the entire chapter of all the CRES
22 rules simultaneously with the rules making in
23 particular here and simply moved up the rule review
24 early, would you be opposed to that?

25 THE WITNESS: No. It's an examination in

1 its totality. There is often positive and negatives
2 that are weighed throughout the give and take on
3 different sections of the rules and that's why taking
4 a one-off review, I don't feel that's appropriate.

5 Q. Mr. Haugh, earlier -- scratch that.
6 Would you agree that there are Ohio electric
7 utilities that currently offer noncommodity products
8 that are not available to CRES providers?

9 A. I believe it was discussed in --
10 Mr. White discussed that. I wasn't fully aware of
11 those, of the details of those.

12 Q. Are you an AEP customer, Mr. Haugh?

13 A. I am.

14 Q. Do you receive letters in the mail asking
15 you to enroll in utility line service?

16 A. Yes, I do quite frequently.

17 Q. And do you know whether any of those
18 offers indicate that the product may be listed on
19 your utility bill?

20 A. Most of those get thrown away.

21 Q. So the answer --

22 A. I don't look at the details about those.

23 Q. So I will ask you just to assume a
24 hypothetical for a second. To the extent that a
25 utility offers noncommodity service or noncommodity

1 billing, would you agree that any rules related to
2 the offering of that product would not be considered
3 in the CRES rules?

4 A. I would consider that a competitive
5 product and should be considered the same as anything
6 offered by a marketer. They should be treated the
7 same.

8 Q. And do you know if different rules apply
9 to Ohio electric utilities than the CRES rules?

10 A. I'm not sure. The one -- the one issue
11 here is that I wouldn't necessarily consider this a
12 utility product. I would consider it a competitive
13 product that should be treated as a -- as the same as
14 anything offered by a marketer.

15 Q. And as you understand it, does this
16 provision of the stipulation apply to both CRES
17 providers and electric utilities that may offer
18 noncommodity service on the utility bill?

19 A. If I could take a quick look at the
20 stipulation.

21 This states that -- the settlement states
22 that the Commission will conduct a review -- a rule
23 review to establish parameters to all for
24 noncommodity billing in all electric distribution
25 utility service territories. I would think a

1 noncommodity item, whether offered by a utility or
2 marketer, should fall under this.

3 Q. Okay. Mr. Haugh, did you participate in
4 the docket commonly referred to as fixed means fixed
5 rules?

6 A. In that it was an offshoot of the -- is
7 that the 3151 rule or COI? Yes.

8 Q. And if you know, did the Ohio Consumers'
9 Counsel oppose any proposals by the Commission to
10 modify rules related to CRES providers in that
11 docket?

12 A. I wasn't part of any comments filed in
13 that case.

14 MR. OLIKER: If I could have one minute,
15 your Honor.

16 That's all the questions I have, your
17 Honor.

18 Thank you, Mr. Haugh.

19 EXAMINER WALSTRA: Thank you.

20 Ms. Petrucci?

21 - - -

22 CROSS-EXAMINATION

23 By Ms. Petrucci:

24 Q. Good afternoon. I am not going to try to
25 work with the microphone at all. If you can't hear

1 me, let me know.

2 Let's stick with the noncommodity billing
3 subject. The Commission has the flexibility to
4 manage its rule review dockets; isn't that correct?

5 A. Yes, the Commission can review as they
6 wish.

7 Q. And are you aware that the Supreme Court
8 of Ohio has even stated that the Commission has the
9 flexibility to manage its dockets?

10 A. I'm not aware of that.

11 Q. If the Commission decided to conduct a
12 rule review on -- with regard to noncommodity billing
13 on a stand-alone basis, do you have any reason to
14 believe that it would not be open to all interested
15 parties who wish to participate?

16 A. A rule review invites -- traditionally
17 would invite all interested parties to participate.

18 Q. And with regard to the supplier
19 consolidated billing subject, under supplier
20 consolidated billing, the customer receives one bill
21 for the electric service, correct?

22 A. Yes.

23 Q. And under utility consolidated billing,
24 the customer also receives one bill for the electric
25 service, correct?

1 A. Yes.

2 Q. Are you aware that the Commission has
3 adopted an administrative rule that allows supplier
4 consolidated billing in Ohio?

5 A. Yes.

6 Q. And are you familiar perhaps with the
7 number being 4901:1-21-18?

8 A. I don't know the exact cite. I know it's
9 allowed though.

10 Q. Okay. And do you recall that it's in the
11 CRES rules?

12 A. Yes.

13 Q. And do you know how many years the
14 Commission -- how many years ago the Commission
15 adopted that particular administrative rule that
16 allows supplier consolidated billing in Ohio?

17 A. You know -- I know at least 10, maybe
18 more. It's been in the -- it's been in there for a
19 while.

20 Q. And are you aware that under the supplier
21 consolidated billing pilot that's proposed, a
22 customer would -- a customer who was -- let's assume
23 that the supplier consolidated billing pilot is put
24 into place, and a CRES provider has a customer on the
25 supplier consolidated billing. Are you aware that

1 the terms of the pilot that is contained in the
2 stipulation would prohibit a CRES provider from not
3 allowing a customer to return to the utility
4 consolidated billing?

5 A. Is there a part of the stipulation you
6 could point me to?

7 Q. If you can turn to page 25. At the top
8 of the page there's subparagraph h.

9 A. Yes.

10 Q. Do you see that provision there?

11 A. Yes.

12 Q. And essentially is it your understanding
13 then that customers during the pilot have the -- can
14 move back to the utility consolidated billing?

15 A. That is what subsection h says.

16 MS PETRUCCI: I have no further
17 questions.

18 EXAMINER WALSTRA: Thank you.

19 Staff?

20 MR. McNAMEE: No questions. Thank you.

21 EXAMINER WALSTRA: Redirect?

22 MR. MICHAEL: None. Thank you, your
23 Honor.

24 EXAMINER WALSTRA: Thank you, Mr. Haugh.

25 THE WITNESS: Thank you.

1 MR. PRITCHARD: Your Honors, at this time
2 I would like to move for the admission of IEU-Ohio
3 Exhibit 1.

4 MR. MICHAEL: We would object, your
5 Honor. First off, it's a FERC document. Mr. Haugh
6 was pretty clear that he didn't participate in it at
7 all. It's not relevant to DP&L. It involves Ohio
8 Power Company. It's a pleading and, you know, there
9 is no relevance to the application of the three-prong
10 test or the proposed amended stipulation.

11 MR. PRITCHARD: May I respond?

12 EXAMINER WALSTRA: You may.

13 MR. PRITCHARD: Mr. Haugh's testimony
14 criticizes the pilot in both the number of customers
15 that may participate and then the duration. And this
16 document is a statement by OCC. It's an admission,
17 and it is contrary to Mr. Haugh's testimony because
18 this document, as we went through the various
19 passages, indicates that OCC had concerns that --
20 about retail transmission riders being billed
21 differently than the PJM allocation methodology and
22 its application and says -- refers to all Ohio retail
23 customers, not just the AEP Ohio service territory.

24 EXAMINER PRICE: Mr. Pritchard.

25 MR. PRITCHARD: Yes, sir.

1 EXAMINER PRICE: Do you feel like the
2 proper foundation for this document was laid? He had
3 no familiarity with it. This was just something, you
4 know, you read passages. He said that's what they
5 are, but he had never said he had seen it before. He
6 participated in drafting it. He declined to
7 acknowledge he participated in this matter.

8 MR. PRITCHARD: It's a statement by OCC.
9 It's an admission against -- contrary to their -- his
10 testimony. I don't feel I need to establish that he
11 participated and drafted this because --

12 EXAMINER PRICE: You need to authenticate
13 it though.

14 MR. PRITCHARD: It's -- it's a FERC
15 document publicly available on the FERC website just
16 like when we use other pleadings in Ohio against
17 parties.

18 EXAMINER PRICE: Those we usually take
19 administrative notice, right?

20 MR. PRITCHARD: Various attorney
21 examiners have different practices but, yes,
22 administrative notice has been one way we've
23 addressed that issue. So if you are not inclined to
24 admit this document, I would request that
25 administrative notice be taken.

1 And one final point, whether Mr. Haugh
2 directly worked on this, he indicated he was familiar
3 with OCC's participation in the proceedings.

4 MR. MICHAEL: I believe it was vaguely,
5 if I am not mistaken.

6 EXAMINER WALSTRA: It will not be
7 admitted, but the Bench will take administrative
8 notice.

9 OCC.

10 MR. MICHAEL: Yes. We moved, your Honor,
11 subject to cross, and I will move for the admission
12 of OCC Exhibit 1.

13 EXAMINER WALSTRA: Any objections,
14 subject to the motions to strike?

15 MR. OLIKER: Subject to renewing the
16 motions to strike, even the ones that were denied,
17 your Honor.

18 EXAMINER WALSTRA: It will be admitted,
19 subject to our previous rulings.

20 (EXHIBIT ADMITTED INTO EVIDENCE.)

21 EXAMINER WALSTRA: And I believe that's
22 all, and we will be adjourned until Monday. And we
23 will go off the record.

24 (Discussion off the record.)

25 (Thereupon, at 3:11 p.m., the hearing was

1 adjourned.)

2 - - -

3 CERTIFICATE

4 I do hereby certify that the foregoing is
5 a true and correct transcript of the proceedings
6 taken by me in this matter on Thursday, April 6,
7 2017, and carefully compared with my original
8 stenographic notes.

9
10
11 Karen Sue Gibson, Registered
12 Merit Reporter.

13 (KSG-6342)

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Case No(s). 16-0395-EL-SSO, 16-0396-EL-ATA, 16-0397-EL-AAM

Summary: Transcript in the matter of The Dayton Power and Light Company hearing held on 04/06/17 - Volume III electronically filed by Mr. Ken Spencer on behalf of Armstrong & Okey, Inc. and Gibson, Karen Sue Mrs.