

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

- - -

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

:

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

:

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 10:00 a.m. on Monday,  
 April 10, 2017.

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VOLUME IV

- - -

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Monday Morning Session,  
April 10, 2017.

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EXAMINER PRICE: Let's go on the record.

Good morning. The Public Utilities  
Commission has set for hearing at this time and place  
Case No. 16-395-EL-SSO, being in the Matter of the  
Application of the Dayton Power and Light Company for  
Approval of Its Electric Security Plan.

This is our fourth day of hearing in this  
proceeding. My name is Gregory Price. With me is  
Nicholas Walstra. We are the attorney examiners  
assigned to preside over today's hearing.

Before we take our first witness we have  
an appearance.

MS. ROBINSON: Yes. Thank you, your  
Honor. Evelyn Robinson on behalf of the PJM  
Interconnection, 2750 Monroe Boulevard, Audubon,  
Pennsylvania 19403, (610) 639-0491.

EXAMINER PRICE: Thank you. OCC, you may  
call your next witness.

MR. MICHAEL: Thank you, your Honor. We  
would like to call Matt Kahal.

EXAMINER PRICE: Welcome back to  
Columbus.

1 MR. KAHAL: Yes.

2 (Witness sworn.)

3 EXAMINER PRICE: Please be seated and  
4 state your name and businesses address for the  
5 record.

6 THE WITNESS: My name is Matthew I.  
7 Kahal, last name is spelled K-A-H-A-L. My business  
8 address is 1108 Pheasant Crossing, Charlottesville,  
9 Virginia 22901.

10 EXAMINER PRICE: Thank you. Please  
11 proceed, Mr. William -- Mr. Michael. Close enough.

12 MR. MICHAEL: Your Honor, I would like to  
13 have marked as OCC Exhibit 12 the supplemental direct  
14 testimony of Matthew I. Kahal.

15 EXAMINER PRICE: So marked.

16 (EXHIBIT MARKED FOR IDENTIFICATION.)

17 MR. MICHAEL: And, your Honor, I would  
18 like to have marked as Exhibit 12A the direct  
19 testimony of Matthew I. Kahal.

20 EXAMINER PRICE: Also be so marked.

21 (EXHIBIT MARKED FOR IDENTIFICATION.)

22 - - -

23

24

25

1 MATTHEW I. KAHAL

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

4 DIRECT EXAMINATION

5 By Mr. Michael:

6 Q. Good morning, Mr. Kahal. You should have  
7 in front of you what was previously marked as OCC  
8 Exhibit 12. Do you see that document?

9 A. I do.

10 Q. Can you please identify that document.

11 A. 12 -- Exhibit 12 is the supplemental  
12 direct testimony that was submitted by the OCC  
13 concerning my supplemental direct testimony.

14 Q. And you should also have before you,  
15 Mr. Kahal, what was previously marked as OCC Exhibit  
16 12A. Can you identify that document?

17 A. Yes. 12A is my direct testimony which  
18 was submitted in November of 2016.

19 Q. And that was testimony prepared by you or  
20 under your direction?

21 A. Yes.

22 Q. And do you have any changes to that  
23 testimony?

24 A. I do. First of all, Exhibit No. 12 I  
25 have two typographical-type corrections. First, on

1 page 28, at line 3, there is a reference to "1.015  
2 million." That should be "1.015 billion." And I've  
3 got the same correction on page 32 at line 14.  
4 Again, "1.015 million" should be "1.015 billion."

5 And on Exhibit 12A, there are also a  
6 couple of minor corrections. First, on page No. 18  
7 at line 15, you'll see the word in the middle of that  
8 line, the word "as," "as" should be "a," that is, the  
9 "as" should be stricken. That's just a typo.

10 And at page 23, there are two minor  
11 corrections. Line 12, the word "increase" should be  
12 "decrease." And then two lines down there's the word  
13 "to." That should be stricken. The word "to," T-O,  
14 should not be there.

15 And let's see. And then, finally, at  
16 page 31, line -- at page 31, line 11, please insert  
17 the word "increases" after the word "revenue." So it  
18 should read "no revenue increases" just to make the  
19 phrasing more precise. And that's it.

20 Q. Okay. With those corrections, Mr. Kahal,  
21 if I were to ask you the same questions as are in OCC  
22 Exhibit 12 and OCC Exhibit 12A, would your answers be  
23 the same?

24 A. Yes.

25 MR. MICHAEL: Your Honor, I move for the

1 admission of OCC Exhibits 12 and 12A, subject to  
2 cross.

3 EXAMINER PRICE: We will defer ruling on  
4 your motion until after the conclusion of  
5 cross-examination.

6 Mr. Sharkey, you may proceed.

7 MR. SHARKEY: Thank you, your Honor.

8 - - -

9 CROSS-EXAMINATION

10 By Mr. Sharkey:

11 Q. Mr. Kahal, we have talked on the phone a  
12 number of times at depositions, but my name is Jeff  
13 Sharkey. I represent The Dayton Power and Light  
14 Company.

15 A. Good morning, Mr. Sharkey.

16 Q. Good morning. I am going to start today  
17 by asking you about the prong in the Commission's  
18 three-part test dealing with whether the stipulation  
19 as a package benefits the public interest. And my  
20 first question to you is it's true, isn't it, that  
21 you consider it to be vitally important that DP&L  
22 have an investment grade credit rating?

23 A. I do.

24 Q. Okay. And you are aware that credit  
25 rating agencies issue different ratings for a -- an

1 individual corporation as an issuer for their secured  
2 debt and as if the entity was a stand-alone  
3 corporation, correct?

4 A. Yes.

5 Q. And just so we're clear, the issuer  
6 rating provides a rating for what the corporation  
7 would be if as it exists it issued new debt at that  
8 time.

9 A. Yes.

10 Q. Okay. And the rating for secured debt  
11 is -- rates the existing secured debt and how safe it  
12 is.

13 A. That's correct.

14 Q. And then the stand-alone rating is --  
15 they pretend as if it exists with no parents, no  
16 subsidiaries, what if we were just looking at this  
17 entity as a stand-alone entity, right?

18 A. That's correct.

19 Q. Okay. And you agree with me it's  
20 important that a utility have an investment grade  
21 credit rating for each of those three different  
22 items, right?

23 A. Yes. I think in the case of DP&L, which  
24 issues secured debt, I think it's the secured debt  
25 that's particularly important. The issuer rating is

1 more generic. The secured debt rating is more  
2 targeted to debt that is secured by the company's  
3 assets.

4 Q. But just so we're clear, you agree it's  
5 important that all three of them be investment grade.

6 A. Oh, I -- I think so, yes.

7 Q. If you would, please, turn to DP&L  
8 Exhibit 105. There should be a small binder at the  
9 table for you that I placed there.

10 A. Oh, this black binder?

11 Q. Yes.

12 A. Yes.

13 Q. And if you open that to the back, Exhibit  
14 105.

15 A. I have that, yes.

16 Q. Okay. And you understand that to be a  
17 rating analysis issued by S&P Global after the  
18 amended stipulation in this case was filed?

19 A. Yes. This was issued, gosh, about two  
20 weeks ago.

21 Q. Okay. Turn, if you would, to page 3 of  
22 the document. You'll see under the paragraph  
23 rationale the first sentence says "The downgrade on  
24 DPL and DP&L reflects our base-case scenario that  
25 over the next few months the Public Utilities



1 Commission of Ohio will most likely approve the  
2 distribution modernization rider in line with the  
3 settlement proposal." Did I read that accurately?

4 A. That's correct.

5 Q. Okay. And so you understand that S&P is  
6 assuming the amended stipulation in this case will be  
7 approved, right?

8 A. Yes.

9 Q. In particular, if you turn back to  
10 page 2.

11 EXAMINER PRICE: Both of your microphones  
12 have cut off.

13 THE WITNESS: Oh, is mine not on?

14 EXAMINER PRICE: No. Neither is  
15 Mr. Sharkey's.

16 THE WITNESS: Oh, sorry.

17 EXAMINER PRICE: Thank you.

18 Q. (By Mr. Sharkey) If you turn to page 2,  
19 first -- first bullet, the last sentence reflects  
20 that S&P is assuming that the DMR will exist for  
21 years one through three of the ESP term; is that  
22 correct?

23 A. That's correct.

24 Q. And then in the second bullet, it  
25 reflects that S&P has lowered the credit ratings for

1 DPL and DP&L to BB-, correct?

2 A. Yes.

3 Q. That was the issuer of credit ratings?

4 A. That's the issuer of credit ratings.

5 Q. And BB- is not an investment grade credit  
6 rating, correct?

7 A. That's correct. Neither is BB if that  
8 was your next question.

9 Q. That was not my next question but that's  
10 fine. It also reflects in the next bullet that they  
11 have lowered the rating on DPL's senior unsecured  
12 debt to B+, correct?

13 A. Yes.

14 Q. And, again, that is not an investment  
15 grade credit rating.

16 A. That is not.

17 Q. Okay. Immediately the next bullet, they  
18 said they've affirmed a BBB- rating on DP&L's senior  
19 secured debt, correct?

20 A. Yes.

21 Q. And that's the lowest investment grade  
22 credit rating that they offer, right?

23 A. You mean -- under the S&P rating system,  
24 yes.

25 Q. And then, finally, in the immediately

1 following bullet, they -- they say that they have  
2 revised DP&L's stand-alone credit rating to BBB from  
3 BBB+, correct?

4 A. Yes.

5 Q. So it's a slight downgrade?

6 A. One notch, medium, BBB.

7 Q. And so BBB is two notches above being not  
8 investment grade, right?

9 A. Yes. There's BBB- and then if you go  
10 below BBB-, it becomes non-investment grade.

11 Q. I believe you told me at your deposition  
12 your view is this report is critical of the  
13 stipulation, correct?

14 A. That's how I read it. That's --  
15 Mr. Sharkey, that's with the caveat that I had before  
16 the deposition -- I had gotten this document about 10  
17 minutes before the deposition and hadn't had a --  
18 hadn't spent much time with it. But I didn't see  
19 this report as being a ringing endorsement of the  
20 stipulation by any means. I think this is critical  
21 of the stipulation and not supportive at all.

22 Q. And by that you mean that the stipulation  
23 doesn't really do it for S&P in terms of the amounts  
24 DPL Inc. and DP&L need for favorable credit ratings?

25 A. That's right. S&P doesn't have a high

1 level of comfort with the stipulation.

2 Q. To your knowledge, other credit rating  
3 agencies have not issued a report since the  
4 stipulation was filed?

5 A. I haven't seen one.

6 Q. But you read the prior reports issued by  
7 those other credit rating agencies, correct?

8 A. I have. I think they go back to last  
9 fall. They are -- I don't believe there is anything  
10 more recent than that.

11 Q. Do you recall -- do you recall that those  
12 other reports had stated that DP&L was in danger of  
13 losing its investment grade credit rating?

14 A. That there was some exposure to it.

15 Q. And DP&L's on a negative credit watch?

16 A. Yes.

17 Q. And being on a negative credit watch  
18 means there is a significant risk of a credit  
19 downgrade in a short period of time?

20 A. There is -- there was a risk. I don't  
21 know if I want to characterize how big that risk is,  
22 but yes.

23 Q. Okay. You agree with me that a credit  
24 downgrade, all else equal, will lead to a higher cost  
25 of debt for the utility?

1           A.    All else equal, obviously market  
2 conditions have a lot to do with it too.

3           Q.    But just so we are clear, all else equal,  
4 yes, you agree?

5           A.    Yes.

6           Q.    And, again, all else equal, a higher cost  
7 of debt will lead to higher utility rates, correct?

8           A.    That's a hard question to answer. It may  
9 or may not. If I was a utility, I would rather have  
10 a higher credit rating than a lower credit rating but  
11 there are obviously tradeoffs because it all depends  
12 on what has to be done to obtain that higher credit  
13 rating, so it's a complicated question.

14          Q.    Yeah. Just to be clear, my question was  
15 a higher cost of debt, all else equal, will lead to  
16 higher utility rates. You would agree with that,  
17 wouldn't you?

18               MR. MICHAEL: Objection, asked and  
19 answered.

20               EXAMINER PRICE: Overruled. He hasn't  
21 answered it yet.

22          A.    Yes. The cost of debt is part of a  
23 utility's cost of service. So if you're going to  
24 deposit the notion of some element of that cost of  
25 service goes up, then one would expect that over time

1 that would be reflected in rates. It's the all else  
2 held equal that's a little bit hard to fit into that  
3 answer. But if one wants to answer the question very  
4 narrowly, then I would agree with you.

5 Q. You understand that certain institutional  
6 investors cannot or will not invest in debt that is  
7 below investment grade?

8 A. Yes. Such as pension funds sometimes  
9 will not do so. There are some mutual funds that by  
10 their policy don't do that. And there's some mutual  
11 funds that specialize in non-investment grade debt  
12 but so there are different institutional practices.

13 Q. You do know that in the non-investment  
14 grade market a utility is more likely to have to  
15 agree to restrictive covenants on its amount to  
16 operate and issue new debt?

17 A. Yes.

18 Q. Do you know whether DP&L's last major  
19 debt issuance was in that non-investment grade  
20 market?

21 A. DP&L?

22 Q. DP&L's.

23 A. None -- I don't recall. I thought that  
24 the last borrowing it did was in 2016 and that was to  
25 replace some maturing debt, but I don't recall the

1 details on that financing.

2 Q. Do you recall if in that issuance The  
3 Dayton Power and Light Company had to agree to  
4 restrictions on its ability to issue new debt in the  
5 future?

6 A. I do recall there are restricted  
7 covenants, yes.

8 Q. Do you know -- strike that.

9 Let me ask you some questions about  
10 DP&L's parent, DPL Inc. You agree that DPL Inc. is  
11 in a financially-stressed situation, don't you?

12 A. Yes. It has way too much debt leverage.

13 Q. You also understand that DP&L's credit  
14 rating is linked to DPL Inc.'s credit rating, right?

15 A. Yes, I do. I'm not -- never mind. I'm  
16 sorry. I wasn't sure if your microphone was on.

17 EXAMINER PRICE: Jeff, switch with the  
18 one with Ms. Bojko.

19 MR. MICHAEL: Turn yours on too, Matt.

20 EXAMINER PRICE: The batteries are  
21 charged. We have no idea.

22 Please proceed.

23 Q. (By Mr. Sharkey) And you understand,  
24 Mr. Kahal, that credit rating agencies will downgrade  
25 a utility based upon the financial weaknesses of its

1 parent corporation, correct?

2 A. If you are asking me whether it could  
3 happen, yes. I don't mean to suggest that  
4 automatically happens.

5 Q. If you would, please, turn in your direct  
6 testimony, I think it's OCC Exhibit 12A, to Exhibit  
7 MIK-1.

8 A. I have that.

9 Q. And as I understand it, MIK-1 is a  
10 document that you've prepared that summarizes ring  
11 fencing testimony by a Mr. Charles Atkins in another  
12 proceeding?

13 A. It does.

14 Q. Okay. And this then -- I'm a little  
15 puzzled why it's summarizing Mr. Atkins, but is it  
16 fair to say you have adopted and proposed these items  
17 as a part of your testimony?

18 A. Yes.

19 Q. Okay. Turn, if you would, then to the  
20 second paragraph there, focus there. You say  
21 "Mr. Adkins has identified three types of risks  
22 associated with a utility being owned by a  
23 financially distressed holding company parent that  
24 could be adverse to customers and utility  
25 regulators." And then the first item you say is "the



1 distressed parent (which controls the utility)  
2 extracts cash flow or other assets from utility to  
3 address its needs thereby disrupting utility  
4 operations." Did I read that accurately?

5 A. Yes.

6 Q. You would agree if that were to occur,  
7 that would have adverse effects on customers and  
8 regulators, correct?

9 A. Yes, it certainly could.

10 Q. Okay. Then the next item that you  
11 identify is that "a parent in bankruptcy could  
12 require the utility subsidiary to participate  
13 voluntarily in that bankruptcy process." Did I read  
14 that accurately?

15 A. Yes.

16 Q. And, again, if that were to occur, you  
17 believe that would have adverse effects for customers  
18 and regulators, right?

19 A. Yes.

20 Q. And then the last item you say "a court  
21 could order the utility to be included in the  
22 parent's bankruptcy," correct?

23 A. Yes.

24 Q. And, again, if that were to occur, that  
25 would have adverse effects on customers and

1 regulators, right?

2 A. Yes.

3 Q. Do you know whether DP&L Jackson in his  
4 testimony focused on the FFO-to-debt metric?

5 A. In his October testimony, he did.

6 Q. Okay. And you agree that FFO to debt is  
7 the key metric that credit rating agencies look at,  
8 right?

9 A. It's one of them, yes.

10 Q. You agree that it's the key?

11 A. I don't think that they exclusively focus  
12 on that. It's -- it's certainly one of the most  
13 important that they look at. They look at several  
14 measures of -- of financial measures which I think do  
15 focus on cash flow.

16 Q. You also agree that prompt action is  
17 needed to shore up and improve the credit ratings of  
18 DPL Inc. and The Dayton Power and Light Company,  
19 right?

20 A. Yes. I would support prompt action.

21 Q. Okay. You agree that it's important that  
22 DP&L be able to provide safe and reliable service,  
23 correct?

24 A. Absolutely.

25 Q. And you do not sponsor any calculations

1 showing that DP&L can provide safe and reliable  
2 service without the DMR, do you?

3 A. No. What I cite in my testimony is -- or  
4 reference to is that up to this point in time it has.  
5 And that's further addressed by Mr. Williams but I'm  
6 not -- I am really not the reliability witness here.

7 Q. You don't -- but just so my record is  
8 clear, you don't have any forward-looking analysis  
9 that shows that DP&L would have enough money to  
10 provide safe and reliable service in your exhibits,  
11 correct?

12 A. That's correct.

13 Q. And you would agree with me that in  
14 addition to any safety or reliability problems that  
15 would occur, DP&L can't provide such service, that  
16 would have an adverse economic impact within DP&L's  
17 service territory if they can't provide safe and  
18 reliable service?

19 A. If -- sure. If it can't provide safe and  
20 reliable service, that would adversely affect  
21 customers, and it would adversely affect the economy.  
22 For example, if there are very, very frequent  
23 prolonged outages of electric service, that would  
24 have an adverse effect.

25 Q. You are aware that the stipulation

1 provides that SSO service will be provided via a  
2 competitive bidding process?

3 A. Yes.

4 Q. And you agree that providing SSO service  
5 through a competitive bidding process is beneficial  
6 to customers, right?

7 A. It's beneficial to customers that take  
8 SSO service. Obviously it's less important to those  
9 who don't take it.

10 Q. Fair enough. And it's true, isn't it,  
11 you are not aware of any regulatory requirement in  
12 Ohio that generation service be provided -- I'm  
13 sorry, that SSO be provided during a competitive  
14 bidding process?

15 A. I believe that's up to the Commission.  
16 It's under the Commission's jurisdiction to make that  
17 determination.

18 Q. But you are not aware of any regulatory  
19 requirement that mandates that SSO service be  
20 provided through a competitive bidding process,  
21 right?

22 A. I think you are referring to a statute of  
23 regulation as opposed to the Commission's discretion.  
24 And, no, I am not aware there is a statutory  
25 requirement. What I am aware of is that if there is

1 a competitive procurement process, there are certain  
2 standards under the law that must be followed.

3 Q. Let me ask you some questions about some  
4 commitments AES made in the stipulation. You  
5 understand that AES agreed not to take dividend  
6 payments from DP&L during the ESP term?

7 A. Yes.

8 Q. Okay. And you agree that is a beneficial  
9 measure, correct?

10 A. Yes. I'm sorry, Mr. Sharkey. I am just  
11 trying to recall whether it was over the full term of  
12 the ESP, which is six years, or over the period of  
13 the DMR. I certainly recall that it was at least  
14 over the term of the DMR, but I would have to  
15 double-check that detail.

16 Q. Okay. It's a little confusing, but I  
17 will represent to you that it was no dividend  
18 payments for the ESP term.

19 A. For the full six years, okay. That was a  
20 detail I just wasn't sure about.

21 Q. Okay. You also understand that this time  
22 for the DMR term that AES agreed not to collect any  
23 of the contractually-required tax sharing payments  
24 from DPL Inc.?

25 A. Correct.

1           Q.    Okay.  And you agree that's a beneficial  
2   measure, right?

3           A.    Yes and no.  And I think that I tried to  
4   address this in the deposition.  It's -- it's -- I  
5   indicated it's an appropriate condition.  I think if  
6   one is going to have a stipulation along the lines of  
7   the one that was confected and submitted, it's  
8   certainly an appropriate condition to have in the  
9   settlement agreement.  In terms of it being  
10   beneficial, it's really a little more than a  
11   continuation of current practice.  So in that sense  
12   I'm not sure that it's an incremental benefit.

13          Q.    You understand also that AES agreed to  
14   convert those tax sharing liabilities into equity of  
15   DPL Inc.?

16          A.    Yes.

17          Q.    And you agree that's a beneficial  
18   measure, right?

19          A.    Yes.  It's -- it's -- it's not an  
20   important beneficial measure.  It's -- it's probably  
21   an appropriate thing to do.  Since I think that the  
22   focus here in the stipulation and in this case has  
23   been on improving cash flow to reduce debt balances,  
24   that accounting writeup or that accounting change is  
25   not terribly important for that purpose.  I don't put

1 much weight on that. I think that the other two  
2 measures we talked about were more important.

3 Q. And you would agree though that those  
4 three items combined, the no dividends, no collecting  
5 tax sharing, and converting liabilities into equity  
6 amounts to AES infusing equity into DPL Inc., right?

7 A. Yes. I think it's analogous to or maybe  
8 even equivalent to there being an equity infusion  
9 from AES into DPL Inc., something that AES obviously  
10 should be doing regardless of whether there is a  
11 stipulation or not.

12 EXAMINER PRICE: Well, at least as to the  
13 dividend payments, they have been doing that; is that  
14 correct?

15 THE WITNESS: They have been, also tax.

16 EXAMINER PRICE: They have been doing the  
17 dividend payments for some period of time.

18 THE WITNESS: Right. They have been  
19 doing that since I think 2012, as well as the  
20 suspension of the tax sharing. So that's a  
21 continuation of current practice.

22 Q. (By Mr. Sharkey) Now, let me ask you a  
23 couple of questions about the AES acquisition of DPL  
24 Inc. You are aware in that acquisition there was  
25 roughly \$4 billion in debt, and about 1 billion of it

1 was placed on DPL Inc. and 3 billion was placed on  
2 AES.

3 A. Yeah. My recollection, I may not have  
4 these numbers exactly memorized, but I thought it was  
5 something like 4.3 billion and 1.3 billion of that  
6 went on DPL Inc.'s books. That's what my  
7 recollection was.

8 Q. And it's true, isn't it, that you don't  
9 sponsor any calculations showing which debt and how  
10 much debt at DPL Inc. is associated with an  
11 acquisition premium?

12 A. I don't, no. I don't think that my  
13 testimony says anything about an acquisition premium  
14 one way or the other.

15 Q. You are aware that the stipulation  
16 provides that DP&L will transfers its generation  
17 assets to an affiliate?

18 A. Yes.

19 Q. And you agree that the transfer of those  
20 assets to an affiliate is a good thing to do?

21 A. Absolutely. It is an appropriate thing  
22 to do, and I thought all along that's what the plan  
23 was for DP&L long before the stipulation was entered  
24 into.

25 Q. That said, it is still true, isn't it,



1     that a transfer of those generation assets to an  
2     affiliate, let's assume it's a subsidiary of DPL  
3     Inc., would have no financial effect on the financial  
4     integrity of DPL Inc., right?

5             A.     I think I understand your question.  
6     It's -- and I understand that question to be isn't it  
7     an internal transfer within DPL Inc., and the answer  
8     is yes.

9             Q.     You're also aware that the stipulation  
10    provides that DP&L or one of its affiliates will  
11    endeavor to sell certain coal-fired generation assets  
12    that are owned by DP&L currently?

13            A.     Yes. The -- it states that there -- that  
14    a sale process will be initiated. I don't know if  
15    there is any commitment to complete that process but  
16    there is at least a commitment to initiate such a  
17    process.

18            Q.     And you believe that's a good and prudent  
19    thing for DP&L or its affiliates to do, right?

20            A.     I do. And, in fact, I think I would go  
21    further than that to say it's -- it's a completely  
22    appropriate thing to do whether there is a  
23    stipulation or not. And I would furthermore suggest  
24    that other assets such as the gas plants should be  
25    included in that as well.

1           Q.    Let me ask you some questions about the  
2 significantly excessive earnings test.

3           A.    Sure.

4           Q.    You recommend that the Commission reject  
5 at least the proposal from Mr. Jackson's original  
6 testimony that the DMR funds should be excluded from  
7 the significantly excessive earnings test, correct?

8           A.    That's correct.

9           Q.    It's nevertheless true, isn't it, you  
10 don't sponsor any calculations showing that DP&L or  
11 DPL Inc. would achieve reasonable FFO-to-debt ratios  
12 if the DMR funds were subject to the significantly  
13 excessive earnings test?

14          A.    I have not calculated the -- the cash  
15 flow-to-debt ratios.

16          Q.    So you don't know whether DP&L or DPL  
17 Inc. would achieve appropriate FFO-to-debt ratios if  
18 those funds -- if the DMR funds were subject to the  
19 SEET test, right?

20          A.    I don't know that. That would -- that --  
21 I'm sorry. Are we talking about DPL Inc. or DP&L?

22          Q.    Both of them.

23          A.    Oh, I think that -- in the case of DP&L I  
24 didn't do those calculations, but Mr. Malinak did,  
25 and he -- he shows that the financial metrics without

1 the DMR are fine for DP&L, and the problem is with  
2 DPL Inc. So I think you are correct with regard to  
3 DPL Inc. but not with regard to DP&L.

4 Q. Are you claiming that Mr. Malinak  
5 sponsored a calculation showing the performance of  
6 DP&L if the DMR funds were subject to a SEET test?

7 A. No. What he -- what he -- what he shows  
8 is that -- is that with no DMR at all, the financial  
9 metrics for DP&L are fine, that the -- that the DMR  
10 is not needed for DP&L on a stand-alone basis.  
11 That's what -- that's what his analysis shows. And  
12 that would be the equivalent -- in fact, that would  
13 be even more stringent than subjecting the DMR to  
14 the -- to the SEET because if the DMR is subject to  
15 the SEET but there is a DMR at the level in the  
16 stipulation, I mean, that would ensure that there  
17 would be earnings of 12 percent or -- and higher than  
18 12 percent. So he's provided a demonstration that's  
19 far more restrictive than what was in your question.

20 Q. Let me ask you some questions about the  
21 reconciliation rider.

22 A. Yes.

23 Q. You understand that the reconciliation  
24 rider relates to DP&L's investment in OVEC, correct?

25 A. Its contract with OVEC, that's what I

1 understand, not its investment in OVEC.

2 Q. Fair enough. And you understand that  
3 DP&L entered into that contract decades ago?

4 A. Yes.

5 Q. Okay. You are --

6 A. It's a legacy resource, yes.

7 Q. You are not aware of any facts suggesting  
8 that DP&L's conduct as it relates to OVEC has been  
9 imprudent in any way, correct?

10 A. That's a hard question to answer. I have  
11 one concern with regard to DP&L's conduct vis-a-vis  
12 OVEC and that has to do with the -- the notion that  
13 DP&L has -- has made a good faith attempt to divest  
14 OVEC as has been advocated by the Commission staff  
15 and I think sought by the Commission as well.

16 And I know that DP&L claims it has made  
17 good faith efforts to do that. I can't sit here and  
18 tell you they have really tried hard enough to do  
19 that. I have doubts about that. Other than that I  
20 would agree with the supposition in your question.

21 EXAMINER PRICE: Do you have evidence  
22 they did not, or are you suggest -- because it hasn't  
23 happened you have doubts?

24 THE WITNESS: The -- my concern, your  
25 Honor, is that it looked like all DP&L did was make

1 an attempt by simply going through the motions of  
2 making requests of the -- of the counterparties for  
3 the divestiture and that's fine. There -- I think  
4 that there may be more aggressive steps that could be  
5 taken for divestiture and up to this point in time  
6 haven't been.

7 It -- it may well be that these are steps  
8 that would have to be taken by its parent or by AES  
9 Corporation, for example, if AES Corporation could  
10 provide guarantees, guarantees of payments to the  
11 counterparties, that might convince them -- in other  
12 words, there's a question among -- whether there are  
13 more steps that could be taken than have been taken  
14 to date. That's all I meant by that.

15 MR. SHARKEY: May I approach, your Honor?

16 EXAMINER PRICE: You may.

17 Q. Mr. Kahal, you recall that you have been  
18 deposed twice in this case, correct?

19 A. Yes.

20 Q. And I will represent to you that the  
21 transcript I just handed to you was from your first  
22 deposition. I would like you to turn, please, to  
23 page 69. Are you there?

24 A. Yes, uh-huh.

25 Q. Page 69, line 1, I asked you the question

1 "You are not aware of any facts suggesting that DP&L  
2 is engaged in any imprudent activities relating to  
3 its OVEC interests, are you?"

4 And your answer was "No, no. And, again,  
5 it's -- I can't say one way or the other. I'm not  
6 here to testify that everything they've done is  
7 prudent, but I am not aware of any specific actions  
8 that were imprudent." Did I read that accurately?

9 A. Yes. And I think that's a fair  
10 statement, and I think that's consistent with what I  
11 just said and that is there's question in my mind  
12 whether there could be -- more could be done than has  
13 been done so far to achieve the divestiture. Whether  
14 those would bear fruit or not I don't know.

15 Q. You're aware that DP&L has made efforts  
16 to divest its OVEC interests, aren't you?

17 A. Yes. As I just described to the ALJ,  
18 yes.

19 Q. And you would agree with me that the  
20 reconciliation rider will act as a hedge against  
21 future changes in market conditions, right?

22 A. Not a very attractive hedge but, yes.  
23 It's -- I think I said in my testimony it's a small  
24 hedge, and it's a hedge that no one would want.

25 MR. SHARKEY: May I approach again, your

1 Honor?

2 EXAMINER PRICE: You may.

3 Q. Now, Mr. Kahal, I have now handed you a  
4 copy of your second deposition transcript that was  
5 from your deposition on March 30, 2017. If you turn  
6 with me to page 62.

7 A. Yes, I have that.

8 Q. Okay. You can see at the top of the page  
9 we were discussing OVEC, right?

10 A. Yes.

11 Q. And then on line 15 I asked you the  
12 question "You do agree in the event that market  
13 conditions change that it would act as a hedge," and  
14 your answer was "Well, it will act as a hedge whether  
15 market conditions change or not. And by change I  
16 assume you mean change as compared to the company's  
17 projections." Did I read that accurately?

18 A. That's correct, yes.

19 Q. Let me ask you some questions about  
20 whether serious bargaining between capable and  
21 knowledgeable parties occurred here. As an initial  
22 matter, it's true, isn't it, you did not participate  
23 in any of the negotiations leading to the settlement.

24 A. That's correct.

25 Q. You understand that staff signed the

1 settlement, correct?

2 A. I understand that, yes.

3 Q. Okay. And you understand that staff  
4 has -- is charged with acting in the interests of all  
5 constituents?

6 A. Yes. I -- I can't site to statutory  
7 authority or anything like that, but as a general  
8 matter, that's my understanding.

9 Q. And you are not aware of any facts  
10 suggesting that staff failed to consider the  
11 interests of all constituents, are you?

12 A. I am not suggesting that at all. I am  
13 not making any judgment on any participant in this  
14 process in terms of their capabilities and how they  
15 participated in the negotiations.

16 Q. You would agree also that staff is  
17 capable and knowledgeable, right?

18 A. I agree.

19 Q. You are aware that Ohio Partners for  
20 Affordable Energy, Edgemont, and People Working  
21 Cooperatively have all signed the stipulation, right?

22 A. Yes.

23 Q. And you understand that they represent  
24 the interests of low-income residential customers,  
25 correct?



1           A.    Yes.

2           Q.    And you are also aware that the City of  
3 Dayton signed the stipulation, right?

4           A.    That's correct.

5           Q.    And you are aware that City of Dayton has  
6 residents that span various income brackets, right?

7           A.    Yes.

8           Q.    You are aware of the fact that the  
9 stipulation includes economic development incentives  
10 and grants?

11          A.    It includes certain grants to agencies,  
12 and it includes some rate discounts.  I've seen no  
13 evidence that they serve as economic incentive -- as  
14 economic incentives.

15          Q.    Do you have a copy of the stipulation  
16 available to you, the amended stipulation?

17          A.    I do.  Would you like me to reference it?

18          Q.    Yes.  I would like you to turn to page 9  
19 of it.

20          A.    Yes.  That Section IV?

21          Q.    Exactly.  The section titled "Economic  
22 Development Rider."

23          A.    Yes.

24          Q.    You understand that the parties eligible  
25 to receive the economic development incentives

1 described in that section are large employers within  
2 DP&L's service area?

3 A. Yes. They are also the signatories to  
4 the settlement.

5 Q. Okay. And do you agree by operating in  
6 DP&L's service territory, they are benefiting the  
7 local economy, right?

8 A. I -- I believe that's true of all of the  
9 nonresidential customers. They are all employers.  
10 These signatories and all of the other nonresidential  
11 customers are employers in the DP&L service area.

12 Q. And you would agree with me that  
13 businesses always look at their operating costs when  
14 they are making decisions and would rather have lower  
15 operating costs than higher operating costs.

16 A. Absolutely. They would rather have lower  
17 operating costs than higher -- than higher operating  
18 costs, all else equal.

19 Q. Turn, if you would, to page 13 of your  
20 testimony, your supplemental testimony, that is.

21 A. I've got that.

22 Q. On line 22 you state "It is also my  
23 understanding that the PUCO has expressed concern  
24 about the approval of settlements in which there is  
25 perceived to be unequal bargaining power between a

1 utility and non-utility settling parties." Did I  
2 read that accurately?

3 A. Yes.

4 Q. It's true, isn't it, you are not aware of  
5 any specific facts that suggest that there was  
6 unequal bargaining power here?

7 A. In the sense that I have no firsthand  
8 knowledge of how the negotiations took place, that's  
9 correct. I can observe what the background is on  
10 the -- on this whole process in this case, but I was  
11 not directly involved in the negotiations, and so I  
12 can't speak to what leverage was specifically  
13 exercised during the negotiations.

14 MS. BOJKO: Objection, your Honor. I  
15 move to strike everything after "that's correct."

16 EXAMINER PRICE: Mr. Michael?

17 MR. MICHAEL: I have nothing to say, your  
18 Honor.

19 EXAMINER PRICE: Your motion will be  
20 granted.

21 MS. BOJKO: Thank you, your Honor.

22 Q. (By Mr. Sharkey) Let me ask you some  
23 questions about whether the stipulation violates any  
24 important regulatory principles.

25 EXAMINER PRICE: Mr. Sharkey, before we

1 leave this topic, I had a couple of questions so now  
2 is an opportune time. The line Mr. Sharkey is  
3 talking about, line 22 of page 13, can you be more  
4 specific as to how the Commission expressed concern?

5 THE WITNESS: I don't have the specifics  
6 on that. I -- I recall seeing -- well, this is  
7 something that I was informed of by the -- by counsel  
8 that this was something that had been expressed by  
9 the Commission in the past. I just don't remember in  
10 which case that it was expressed.

11 EXAMINER PRICE: When you say the  
12 Commission, do you mean the majority of the  
13 Commission, or do you mean a commissioner in dissent?

14 THE WITNESS: That I don't recall, your  
15 Honor. I thought it was a majority of the  
16 Commission, but I couldn't say for sure.

17 EXAMINER PRICE: Do you recall whether it  
18 was the dissenting decision by Cheryl Roberto, Case  
19 12-1230-EL-SSO?

20 THE WITNESS: I don't recall that  
21 specifically.

22 EXAMINER PRICE: Do you recall whether  
23 the Office of Consumers' Counsel filed an application  
24 for rehearing incorporating that argument in their  
25 application for rehearing?

1 THE WITNESS: No, your Honor.

2 EXAMINER PRICE: Do you recall the  
3 Commission majority rejected that request?

4 THE WITNESS: I do not recall that, sir.

5 EXAMINER PRICE: Do you recall the  
6 Commission rejecting that request in the subsequent  
7 case as well?

8 THE WITNESS: No, your Honor.

9 EXAMINER PRICE: Thank you.

10 Thank you, Mr. Sharkey.

11 MR. SHARKEY: Thank you, your Honor.

12 Q. (By Mr. Sharkey) So I was starting to ask  
13 you some questions about the ESP versus MRO test.

14 A. Sure.

15 Q. Do you agree with me that DP&L owned  
16 generation assets as of July 31, 2008, correct?

17 A. Yes.

18 Q. Okay. And you understand that under the  
19 stipulation DP&L's going to be conducting a  
20 competitive bidding process soon.

21 A. I hope so, yes.

22 Q. And it's your understanding of that  
23 to-be-conducted bidding process that prices are  
24 projected to be lower than prices are today for SSO  
25 service, correct?

1           A.    I'm hoping that this microphone is  
2   operating.

3                   EXAMINER PRICE:   Turn it on again.

4                   THE WITNESS:   Oh, now it is, thank you.

5           A.    I'm not sure I understood the question  
6   because the prices coming out of that auction process  
7   I think for the assets or that sale process for the  
8   assets would be asset prices.   SSO prices are  
9   electricity prices, so they are two different things.  
10   I don't know how you could compare one with the other  
11   unless I misunderstood your question.

12           Q.    I am not asking you at all about any  
13   assets to be clear.   I'm comparing DP&L's current SSO  
14   prices to the expected results of the SSO auction  
15   here when the new SSO auction is conducted soon.

16           A.    Oh, I'm sorry.   I thought you were  
17   talking about the asset auction.   I misunderstood  
18   your question.   I think that's correct as far as I  
19   know.

20           Q.    So what you are saying is correct is the  
21   new prices are projected to be lower than the current  
22   prices.

23           A.    That's correct.   It's expecting that  
24   the -- that the SSO auction when it does happen will  
25   produce lower prices.   Nobody knows for sure.

1           Q.    Okay.  And regarding the ESP versus MRO  
2   test, I want you to assume for me that under an MRO  
3   in year one SSO rates will be set 10 percent based  
4   upon competitive bidding and 90 percent based upon  
5   the preexisting SSO rates.  Does that make sense to  
6   you?

7           A.    Well, I understand the math.  It doesn't  
8   make sense to me as policy, but I understand the  
9   math.

10          Q.    Okay.  That's all you need to understand.  
11   If that's true, then as a matter of pure math, you  
12   would agree with me that SSO rates would be higher  
13   under an MRO than under an ESP, right?

14          A.    With all the assumptions I think in your  
15   question, the answer would be yes.

16          Q.    You read the ESP versus MRO testimony of  
17   DP&L Witness Malinak, correct?

18          A.    I did.  There is more than one, but yes.

19          Q.    Okay.  And you understand that he has  
20   deposited two separate scenarios, one under which the  
21   DMR was available under an MRO and the other in which  
22   the DMR was not available under an MRO?

23          A.    Yes.  He actually has a total of three  
24   scenarios, but two of them are just variations on the  
25   same theme.

1           Q.    Okay.  And if you would turn in your  
2   direct testimony to page 42, line 8, you state "My  
3   assessment is that there is no provision under the  
4   MRO statute that would permit a distribution  
5   modernization rider to be approved," correct?

6           A.    Yes.

7           Q.    You are aware that in a recent  
8   FirstEnergy case the Commission concluded that a  
9   charge comparable to the FirstEnergy DMR would be  
10  available under an MRO, right?

11          A.    Yes.

12          Q.    Okay.  And you are aware that in that  
13  decision the Commission cited to the availability of  
14  the emergency relief under an MRO?

15          A.    It did.  I thought that the Commission  
16  also said it had never been used before, and so it  
17  was kind of a novel idea.  But the answer to your  
18  question is yes.

19          Q.    Okay.  And it's true, isn't it, you have  
20  not done any analysis as to whether DP&L would be  
21  entitled to emergency relief under an MRO, right?

22          A.    That's correct.

23          Q.    You do agree that if a DMR-type charge  
24  was equally available under an ESP and MRO, then the  
25  DMR would be a wash for purposes of the ESP versus



1 MRO test?

2 A. Are you asking me whether I agree with  
3 that?

4 Q. I will restate the question. You agree  
5 that if we assume a DMR-type charge was equally  
6 available under an ESP and an MRO, then under that  
7 assumption the DMR would be a wash for purposes of  
8 the ESP versus MRO test, right?

9 A. That would be true in theory. Whether --  
10 whether it applies to this particular case is -- is  
11 another question so I can only -- I can give you an  
12 affirmative response to that in a very abstract way.  
13 In this particular case there is a specific DMR  
14 amount that's the result of a stipulation. And I  
15 can't testify that in the absence of the stipulation  
16 that that same DMR, if any, would be approved under  
17 an MRO.

18 Q. No. I am not asking you whether it would  
19 be approved or not. I am just asking you if we  
20 assume that an MRO would be an emergency relief-type  
21 charge in the same amount as the DMR charge under the  
22 ESP stipulation, then the DMR, that \$105 million, is  
23 a wash for purposes of the ESP versus MRO test,  
24 correct?

25 A. I understand your question really to be a

1 tautology; and, therefore, I have to agree with it,  
2 but you've -- you have all the assumptions in your  
3 question that would require that outcome.

4 Q. And you understand that Mr. Malinak's  
5 second scenario is that the DMR would not be  
6 available under an MRO?

7 A. Yes.

8 Q. And you understand that he opines that in  
9 that scenario, DP&L would have difficulty and may not  
10 be able to provide safe and reliable service?

11 A. More or less, he indicates that that's a  
12 possibility.

13 Q. You agree with me that if DP&L is not  
14 able to provide safe and reliable service, that would  
15 impose on customers costs that would be difficult or  
16 impossible to quantify?

17 A. That's right.

18 Q. And --

19 A. I don't want to use the word impossible.  
20 I feel more comfortable with difficult.

21 Q. Let me ask you some questions about ring  
22 fencing. You do propose certain ring fencing  
23 measures be implemented, correct?

24 A. That's correct.

25 Q. Are you aware whether the Ohio Revised

1 Code has corporate separation requirements?

2 A. Did you say corporate?

3 Q. Corporate separation.

4 A. Corporate, yes.

5 Q. You are not aware of any facts suggesting  
6 that DP&L is in violation of any of those  
7 requirements, are you?

8 A. No. I am not suggesting they are in  
9 violation of any -- anything in the Ohio Code or even  
10 anything under Commission policy with regard to  
11 corporate separation.

12 Q. You know what competitive retail electric  
13 service is defined as in Ohio, right?

14 A. Yes.

15 Q. Okay. You are not aware of any facts  
16 suggesting that DP&L is providing competitive retail  
17 electric service, are you?

18 A. Not at this time. I think that they have  
19 done some in the past but -- or an affiliate has but  
20 not at this time, no.

21 Q. Okay. And you are not aware of any facts  
22 suggesting that DP&L is providing any nonelectric  
23 product for service, are you?

24 A. No.

25 Q. And my last question to you you are not

1 aware of any requirement that any of the ring fencing  
2 provisions that you advocate for be implemented in  
3 Ohio, are you?

4 A. I am not -- are you asking me am I not  
5 advocating those?

6 Q. No. You are not aware of any requirement  
7 that the ring fencing measures you are advocating for  
8 be implemented in Ohio.

9 A. By required you mean required by statute  
10 or Commission regulation; is that what you mean?

11 Q. Correct.

12 A. Right. There's no such requirement at  
13 this time. That's why I am advocating it be imposed.

14 MR. SHARKEY: Your Honor, I have no  
15 further questions.

16 EXAMINER PRICE: Thank you.

17 Ms. Bojko?

18 MS. BOJKO: Thank you, your Honor.

19 - - -

20 CROSS-EXAMINATION

21 By Ms. Bojko:

22 Q. Good morning, Mr. Kahal.

23 A. Good morning.

24 Q. My name is Kim Bojko. I am representing  
25 the Ohio Manufacturers' Association Energy Group.

1 Mr. Sharkey asked you about some of the signatory  
2 parties to the stipulation. I would like to ask you  
3 about a couple more. Isn't it true that the  
4 stipulation is either supported by or not opposed by  
5 several customer groups?

6 A. Yes.

7 Q. And isn't it true that it is also  
8 supported by specific customers of DP&L?

9 A. Individual customers as parties, that's  
10 correct.

11 Q. And isn't it true that it is supported by  
12 competitive retail electric suppliers?

13 A. Yes. I'm thinking of RESA as being -- as  
14 representing a whole -- a group rather than  
15 individuals.

16 Q. Suppliers.

17 A. Suppliers, yes.

18 Q. Would you turn to page 13 of your  
19 supplemental testimony that's been marked as OCC  
20 Exhibit 12.

21 A. Yes.

22 Q. On page 13, lines 12 through 15, you  
23 state that "it appears that many of the supporting  
24 (or even non-opposing parties) appear to be  
25 motivated." Have you spoken to any of the signatory

1 or nonopposing parties to ask them what their  
2 motivation might have been?

3 A. I have not spoken to any of them.

4 Q. And isn't it true, sir, that the  
5 settlement, the amended stipulation, actually states  
6 that the parties or nonopposing parties are  
7 supporting the stipulation as a package?

8 A. Yes.

9 Q. And you would agree with me, sir, that  
10 the amended stipulation is better than the  
11 application that was initially filed by DP&L.

12 A. You mean back in February, or do you mean  
13 the amended application?

14 Q. Oh, excuse me. Either one but the  
15 amended application.

16 A. It's hard to remember the original --

17 Q. Well, sir --

18 A. -- but as far as the amended -- if we can  
19 compare it to the amended, which I think is more of  
20 an apples to apples comparison, I do agree with that.  
21 I think that there are -- there are some things in  
22 the stipulation as compared to the amended  
23 application I think that are very positive.

24 Q. And you think one of those positives is  
25 that the DMR proposed in the amended application of

1 1.015 billion has now been reduced to 315 million.

2 A. Yes, with the caveat that I hope that it  
3 wouldn't go beyond the 315 million. I recognize  
4 there is an opportunity to expand it further but not  
5 a commitment to expand it further.

6 Q. Right. So your testimony focused on the  
7 315 million, and you compare that to the 1.015  
8 billion; is that correct?

9 A. Oh, I think that's the single biggest  
10 item. There are some other features. I indicated in  
11 response to Mr. Sharkey that I thought that the  
12 provisions relating to the -- let's see, there are  
13 either three or four commitments, I am trying to  
14 remember, those commitments being no dividends during  
15 the DMR period, the suspension of the tax sharing,  
16 the equity writeup associated with the tax sharing,  
17 and the asset -- the coal plant asset divestiture and  
18 sale. Those four items I think will -- are  
19 positives. They may well be things that would happen  
20 without the stipulation, but it's good to have them  
21 in there.

22 Q. And I believe you also stated that the  
23 elimination of the CER rider was another positive; is  
24 that correct?

25 A. That's correct. Thank you.

1           Q.    And I believe you state in your testimony  
2   that the elimination of the collection for deferred  
3   OVEC costs is a positive?

4           A.    I don't know.  I think that it's good  
5   that that deferral has been taken out of this case.  
6   But it's -- it's still alive.

7           MR. MICHAEL:  We can hear you all right,  
8   Matt.

9           A.    It's still alive and well.  As I  
10   understand it, it's -- the company has not given up  
11   on that.

12          Q.    Right.  But the signatory parties did not  
13   agree to it as proposed in the application; is that  
14   correct?

15          A.    As proposed in the application.  I think  
16   that they did agree to keep the issue alive.

17          Q.    And could you turn to page 5 of your  
18   testimony.  I want to make sure I am correct in your  
19   numbers.

20          A.    In the supplemental?

21          Q.    Yes.  I am only going to be referring to  
22   your supplemental today.

23          A.    Okay.

24          Q.    Exhibit 12.  Line 16 you say "a  
25   three-year charge totaling 325 million."  I think



1 that was a mistake. That should be 315; is that  
2 correct?

3 A. Thank you, yes.

4 Q. And, sir, you would also agree with me  
5 that the shorter term from the amended application to  
6 the term in the settlement is a benefit as well.

7 A. It is. That was something that I  
8 advocated in my direct testimony, limiting it to  
9 three years, and that's true of the DMR. I would  
10 like to extend that to the rest of the ESP, so it  
11 takes a step in that direction.

12 Q. Could you turn to page 24 of your  
13 supplemental testimony, please. Beginning on line  
14 12, you discuss Section V.1.(c). Do you see that?

15 A. Yes.

16 Q. Of the amended stipulation? And that  
17 Section V.1.(c) begins on page 11 of the amended  
18 stipulation. Could you turn to that, please.

19 A. Yes, I'm at page 11.

20 Q. All right. So let's look at your  
21 testimony on page 24, lines 14. You say "which  
22 Witness Schroder euphemistically refers to as  
23 'offsetting' (presumably offsetting the DMR)." Do  
24 you see that?

25 A. Yes.

1           Q.    Okay.  If you could look at page 11 of  
2   the amended stipulation, could you read the very  
3   first sentence of section c.

4           A.    Yes.  "To partially offset the costs of  
5   this Stipulation and rate design modifications,  
6   within ten days of an Order by the Commission  
7   authorizing DP&L to file tariff sheets to collect  
8   Distribution Modernization Rider.  DP&L will pay  
9   \$145,000 to IEU-Ohio to the benefit of its members,  
10   \$18,000 to OMAEG for the benefit of its members and  
11   \$160,000 to Kroger, according to instructions for  
12   payment provided by the parties."

13          Q.    So that sentence, the beginning of  
14   section c, specifically says that these provisions  
15   that you reference in your testimony are to partially  
16   offset the costs of the stip and rate design  
17   modifications; is that correct?

18          A.    That's correct.

19          Q.    So it's not presumably.  It states they  
20   are to offset, correct?

21          A.    Yes.

22          Q.    Let's turn to -- and on page 32 of your  
23   supplemental testimony, you talked about -- you talk  
24   about the economic development incentives on --  
25   starting on line 18, and you use terms like "likely

1 in exchange." And, again, with regard to the  
2 economic development incentive, you have not spoken  
3 to any of the signatories or nonopposing parties that  
4 received those incentives to ask them their  
5 motivations behind those incentives; is that correct?

6 A. That's correct. This is not based on  
7 conversations that I have had. It's based on  
8 inference.

9 MS. BOJKO: Thank you. That's all I  
10 have, your Honor.

11 EXAMINER PRICE: Thank you.

12 MS. BOJKO: Thank you, Mr. Kahal.

13 EXAMINER PRICE: Mr. Olikar?

14 MR. OLIKAR: I might scoot down there.

15 MR. PRITCHARD: Your Honor, I am not sure  
16 if you meant to start at that end, but I think  
17 Gretchen had a couple and I have.

18 EXAMINER PRICE: No. I was starting back  
19 with Joe and coming back around. I am going  
20 clockwise.

21 MR. OLIKAR: Good morning.

22 MR. ALEXANDER: Wait, wait. Your Honor,  
23 I don't mind going last, but I do have brief  
24 questions.

25 EXAMINER PRICE: I did not see you had

1 questions. You can go after Mr. Olikier.

2 MR. ALEXANDER: I don't mind going last,  
3 your Honor.

4 EXAMINER PRICE: Okay.

5 MR. OLIKER: Thank you, your Honor.

6 - - -

7 CROSS-EXAMINATION

8 By Mr. Olikier:

9 Q. Good morning, Mr. Kahal. Is it Kahal?

10 A. Kahal. Comes out the same in the  
11 transcript.

12 Q. Okay. Just a few questions for you this  
13 morning. First, I am correct you have two pieces of  
14 testimony that you are sponsoring?

15 A. Yes.

16 Q. And could you remind me how they are  
17 marked so I just don't confuse that?

18 A. The supplemental is marked as Exhibit 12;  
19 the direct testimony from last November is marked as  
20 12A.

21 Q. Thank you. So starting with Exhibit 12,  
22 could you turn to page 34, please.

23 A. I have that.

24 Q. And on line 12, you refer to customers  
25 that pay for charges related to OVEC as "captive

1 customers." Would you like to modify that statement  
2 to strike the word "captive"?

3 A. I'm sorry. Okay. We're in 12A?

4 Q. No. We are in 12.

5 A. Oh, I'm sorry. Okay. I was in the wrong  
6 place. And that's page 34, did you say?

7 Q. Page 34, line 12.

8 A. Do I want to modify my testimony? No.

9 Q. So you would like to leave the word  
10 "captive" in there?

11 A. Yes.

12 Q. Okay. Would you agree that only default  
13 service customers pay for any charges or receive any  
14 credits that may be provided by the OVEC-related  
15 provision?

16 A. That's the proposal in the settlement,  
17 yes.

18 Q. Okay. And --

19 A. I am not -- I don't know if anybody is  
20 paying -- paying for OVEC right now. I'm not sure  
21 whether OVEC is in rates presently.

22 Q. And do you agree that default service  
23 customers could take service from a CRES provider  
24 and, therefore, avoid taking any charges or credits  
25 associated with the OVEC provision that is

1 recommended in the stipulation?

2 A. That's correct. That's one of the  
3 reasons why I am so troubled by this.

4 Q. And you previously testified in AEP Ohio  
5 and FirstEnergy's ESP case, correct?

6 A. Yes.

7 Q. Would you agree that one of the main  
8 subjects in those ESP cases was related to purchase  
9 power agreements with affiliates?

10 A. Yes.

11 Q. And you actually testified in  
12 FirstEnergy's proposed purchase power agreement case,  
13 the ESP case, correct?

14 A. Yes.

15 Q. And would you agree that those PPAs were  
16 structured as a utility paying a cost-based revenue  
17 requirement to an affiliate?

18 A. Yes.

19 Q. And then the utility would sell the  
20 capacity, energy, and ancillary services into the  
21 wholesale market, correct?

22 A. Yes.

23 Q. And the difference between the  
24 market-based revenues received by the utility and the  
25 cost-based payments made to the affiliate would

1 either be flowed through to all customers as a credit  
2 or charge, correct?

3 A. That's right.

4 Q. Would you agree that the Federal Energy  
5 Regulatory Commission ultimately determined that  
6 those PPAs may represent violations of the affiliate  
7 abuse standards?

8 MR. ALEXANDER: I am going to object. I  
9 think we are a little afield here.

10 EXAMINER PRICE: Mr. Olikar, would you  
11 care to respond to Mr. Alexander's relevance  
12 objection?

13 MR. OLIKER: He says these are captive  
14 customers, and we are going down that path.

15 EXAMINER PRICE: We will give Mr. Olikar  
16 a little bit of leeway. Overruled.

17 MR. OLIKER: Could you repeat my  
18 question, please, Karen.

19 (Record read.)

20 A. I have a slightly different  
21 understanding, and I -- and I wasn't directly  
22 involved in the FERC cases, but my understanding was  
23 that the -- is that the Federal Energy Regulatory  
24 Commission indicated that -- that they were subject  
25 to the affiliate abuse standards; and, therefore, it

1 would have to stand scrutiny. I don't recall that  
2 they actually determined that there was a violation.  
3 It's kind of a subtle difference.

4 Q. That's why I used the word "may" in my  
5 question.

6 A. Okay. Fair enough.

7 Q. Okay. And you read the order that FERC  
8 issued regarding those PPAs, correct?

9 A. I never read the FERC orders, no.

10 Q. You did not read them?

11 A. No. I was aware of what the outcome was,  
12 but I didn't actually read the orders.

13 Q. Are you aware of whether the FERC made  
14 any holdings with respect to the definition of  
15 captive customers?

16 A. No.

17 MR. OLIKER: Your Honor, at this time,  
18 although I don't know if it's necessarily appropriate  
19 or necessary, can we take administrative notice of  
20 the FERC orders related to the complaint filed by  
21 EPSA against FirstEnergy Ohio utilities and Ohio  
22 Power Company and its affiliate AEP Generation  
23 Resources?

24 EXAMINER PRICE: Any objections?

25 Seeing none, we will take administrative



1 notice.

2 MR. ALEXANDER: Your Honor, I couldn't  
3 hear what was moved.

4 MR. OLIKER: The request was for  
5 administrative notice, and I can get the docket  
6 numbers.

7 MR. ALEXANDER: I don't need the number.  
8 I actually couldn't hear what you said.

9 MR. OLIKER: The request was for  
10 administrative notice of FERC orders granting the  
11 complaint filed by EPSA against Ohio Power Company,  
12 AEP Generation Resources, FirstEnergy Solutions, and  
13 Cleveland Electric Illuminating Company and Ohio  
14 Edison Company and Toledo Edison Company. And those  
15 are in dockets EL16-34-000 and EL16-33-000 issued  
16 April 27, 2016.

17 MR. ALEXANDER: No objection.

18 Q. (By Mr. Olikier) And just so we are clear,  
19 Mr. Kahal, you are not aware of whether FERC has  
20 explicitly defined captive customers as being those  
21 customers that are required to pay a nonbypassable  
22 charge for generation-related costs?

23 A. Not specifically. Generally when FERC  
24 talks about customers, they generally talk about  
25 wholesale customers, not retail customers; but, no, I

1 didn't read the order, so I couldn't -- I couldn't  
2 tell you exactly what that order said.

3 Q. And then just so we're correct, as you  
4 use the word "captive" in your testimony, you are not  
5 trying to attach any sort of significance from a FERC  
6 scrutiny level?

7 A. I am not, no. In fact, the word  
8 "captive" refers to delivery service, not generation  
9 service.

10 MR. OLIKER: Could I have that answer  
11 read back, please.

12 EXAMINER PRICE: You may.

13 (Record read.)

14 Q. So let's go back then to page 34 of your  
15 Exhibit 12. You are not stating on line 12 that all  
16 distribution customers would be paying for  
17 OVEC-related charges or receive their credits,  
18 correct?

19 A. No, no. I am not saying that at all. If  
20 you look at this in the context of the question,  
21 the -- the question related to the justification for  
22 having an OVEC charge of any kind; that is, should  
23 there even be an OVEC charge. And the answer simply  
24 says it's going to be imposed on captive customers,  
25 that is, distribution customers, and who get nothing

1 in return for the OVEC charges. That's all this goes  
2 to in this question and answer.

3 EXAMINER PRICE: But you understand when  
4 you say it's a distribution charge, it's only going  
5 to be charged to SSO customers.

6 THE WITNESS: Oh, that's correct. And  
7 I -- and later on in the testimony I get to who  
8 should pay it, that is, which subgroup of customers  
9 should pay it. But this statement at this point in  
10 the testimony simply goes to should there be an OVEC  
11 charge at all regardless of who should pay it.  
12 That's the distinction I was making, your Honor.

13 EXAMINER PRICE: But they are only  
14 captive to the extent they do not choose a CRES  
15 supplier; is that right?

16 THE WITNESS: That's correct.

17 MR. OLIKER: Given the clarification I  
18 won't move to strike.

19 EXAMINER PRICE: We are going to deny the  
20 motion to strike. He can define captive however he  
21 wants. I do agree it's not the normal definition,  
22 and the Commission will give it its due weight.

23 Q. Now, on page 36, am I correct you  
24 recommend modifying the OVEC provision to assess any  
25 charge or credit to all distribution customers

1 through a nonbypassable rate structure?

2 A. Well, with the caveat that I'm not  
3 supporting any customers pay for it, it's that if  
4 there is going to be an OVEC charge, I think it  
5 should be fairly assigned to all distribution  
6 customers, but I am not suggesting any of the  
7 customers should pay for it.

8 Q. And turning to page 5, footnote 1, you  
9 incorporate by reference certain pages from your  
10 prior testimony in this case that's also marked as  
11 Exhibit 12A, correct?

12 A. Well, no. I was simply identifying the  
13 sections that are most relevant to the current  
14 stipulation. Exhibit 12A is -- is -- was filed and  
15 is being sponsored, the entire testimony, but there's  
16 certain portions of it that are no longer relevant  
17 such as the clean energy rider portion would no  
18 longer be relevant.

19 Q. But pages 49 to 52 are deemed indeed  
20 relevant, correct?

21 A. Yes. I have to go back and look at what  
22 those pages say, but yes.

23 Q. I'm sorry for interrupting you,  
24 Mr. Kahal.

25 A. The answer is yes.

1           Q.    And Exhibit 12A was initially prefiled on  
2 November 21, 2016, correct?

3           A.    Yes.

4           Q.    That was in response to the initial  
5 application?

6           A.    Yes.

7           Q.    And in that application DP&L proposed to  
8 collect the going-forward difference between costs  
9 DP&L pays to OVEC and the market-based revenues that  
10 DP&L receives through a nonbypassable charge,  
11 correct?

12          A.    As I recall, the amended application  
13 dealt with the deferral issue. That's what I recall.  
14 I can't remember what the amended application, which  
15 has obviously been superseded, said about it going  
16 forward. My testimony dealt more with the deferral.

17          Q.    And on page 50, line 12, of Exhibit 12A,  
18 do you not cite "Setting up a Reconciliation Rider  
19 would hinder the divestiture of the OVEC assets  
20 because allowing full recovery of the costs  
21 associated with the assets does not incentivize DP&L  
22 to divest"?

23          A.    Sorry. We're in Exhibit 12 now?

24          Q.    12A.

25          A.    Oh, 12A, okay. I'm sorry. I thought you

1     said 12.

2                   EXAMINER PRICE: 12A, page 50.

3           A.     Could you give me the line number  
4     reference again?

5           Q.     This is page 50, line 12. Let me know if  
6     I read this right. "Setting up a Reconciliation  
7     Rider would hinder the divestiture of the OVEC assets  
8     because allowing full recovery of the costs  
9     associated with the assets does not incentivize DP&L  
10    to divest."

11          A.     Yes. That's correct.

12          Q.     Okay.

13          A.     That is a concern that I have about that.

14          Q.     And then on page 51, lines 9 to 13, do  
15    you not state that it would be unlawful to allow DP&L  
16    to recover going-forward costs related to OVEC  
17    through a nonbypassable charge?

18          A.     Well, I don't use the term "unlawful,"  
19    and I try to stay away from that for obvious reasons.  
20    But, yeah, I do suggest that it would be a transition  
21    charge which the courts have indicated have -- would  
22    be unlawful.

23          Q.     And that's page 51, lines 9 to 13. You  
24    state "This in no way implies that Utility  
25    distribution customers should be responsible for OVEC

1 over-market costs. Again, such charges to customers  
2 to recover above market costs would be a transition  
3 charge. And the PUCO cannot authorize any more  
4 transition charges for DP&L."

5 A. Right.

6 Q. Did I read that correctly?

7 A. Yes.

8 Q. And on page 37 of Exhibit 12, which is  
9 the later filed testimony, I'm sorry to make you go  
10 back and forth, Mr. Kahal.

11 A. We are in 12 now?

12 Q. Just 12.

13 A. Sure.

14 Q. And in this testimony you state "To  
15 Witness White's credit, his testimony does not seem  
16 to advocate for the Reconciliation Rider or OVEC  
17 out-of-market cost recovery for utility customers,  
18 and he clearly is right that this Rider provides DP&L  
19 with a subsidy." Now, regarding that statement, you  
20 did read Mr. White's testimony, correct?

21 A. I read the section that dealt with this  
22 issue. There were other issues that were handled by  
23 another OCC witness.

24 Q. Would you agree that Mr. White did not,  
25 in fact, state that making the OVEC-related provision

1 bypassable would provide DP&L with a subsidy?

2 A. I don't have his testimony in front of me  
3 right now. Whatever he said speaks for himself.

4 Q. So you will -- you will defer to his  
5 written testimony?

6 A. Absolutely.

7 Q. Okay. And if I stated -- subject to  
8 check, would you agree that Mr. White stated making  
9 any cost recovery related to DP&L's OVEC entitlement  
10 bypassable avoids any competitive subsidy?

11 MR. MICHAEL: Objection. He said he  
12 didn't read it, and he said it speaks for itself.

13 EXAMINER PRICE: No. He said he didn't  
14 have it in front of him.

15 MR. MICHAEL: That's true. He didn't  
16 have it in front of him. He couldn't answer the  
17 question. It speaks for itself.

18 EXAMINER PRICE: Overruled.

19 MR. OLIKER: Could you reread the  
20 question, Karen, or if the witness needs to --

21 EXAMINER PRICE: Let's have the question  
22 back.

23 (Record read.)

24 A. That's not how I read his testimony and  
25 that's not how I recall it but, as I said, it speaks



1 for itself. I inferred that he felt that the -- that  
2 the OVEC -- OVEC charge was a subsidy to DP&L, but I  
3 don't want to put words in any witness's mouth.

4 MR. OLIKER: Could I approach, your  
5 Honor?

6 EXAMINER PRICE: You may.

7 MR. OLIKER: Sorry. I only have the one  
8 copy but perhaps this would refresh the witness's  
9 recollection.

10 Q. Please look at line 21, page 11, going on  
11 to page 12.

12 A. Yes.

13 Q. Now, Mr. Kahal, would you agree that  
14 Mr. White did, in fact, state that making any cost  
15 recovery related to DP&L's OVEC entitlement  
16 bypassable avoids a competitive subsidy?

17 A. Yes, he does says that. He said that it  
18 avoids an anticompetitive subsidy if you make it  
19 bypassable.

20 MR. OLIKER: Thank you. No more  
21 questions, your Honor.

22 Thank you, Mr. Kahal.

23 EXAMINER PRICE: At this time I think we  
24 are going to take a 10-minute break.

25 Let's go off the record.

1 (Recess taken.)

2 EXAMINER PRICE: Let's go back on the  
3 record.

4 Ms. Petrucci, please proceed.

5 MS. PETRUCCI: Thank you.

6 - - -

7 CROSS-EXAMINATION

8 By Ms. Petrucci:

9 Q. I am not going to try and use the  
10 microphone. If you have trouble hearing me, let me  
11 know. I want to stick with the OVEC collection  
12 subject. The collection of the OVEC net costs  
13 through the reconciliation rider, that will collect  
14 generation expenses, correct?

15 A. Yes.

16 Q. And if the revenues under that rider  
17 resulted in -- exceeded the costs, that would then  
18 also be resulting in a credit of generation revenues,  
19 correct?

20 A. Yes.

21 Q. And DP&L believes that the collection of  
22 the net proceeds of the OVEC generation will have an  
23 effect of stabilizing retail electric service; is  
24 that correct?

25 A. There was a statement to that in Witness

1 Schroder's testimony, that it would serve as a hedge,  
2 and I take that to mean it provides at least a small  
3 stabilization effect.

4 MS. PETRUCCI: Okay. Thank you. I have  
5 no further questions.

6 EXAMINER PRICE: Thank you.

7 Mr. Pritchard?

8 MR. PRITCHARD: My questions have been  
9 asked and answered.

10 EXAMINER PRICE: I am coming, Trevor.

11 Mr. Alexander.

12 MR. ALEXANDER: Thank you, your Honor.

13 - - -

14 CROSS-EXAMINATION

15 By Mr. Alexander:

16 Q. Mr. Kahal, my name is Trevor Alexander,  
17 and I am representing Honda and the City of Dayton in  
18 this proceeding. Could you please turn to your  
19 amended testimony, your supplemental testimony, page  
20 18, line 8. And here you compare DMR revenues to the  
21 distribution rates. Do you see that?

22 A. Yes.

23 Q. So in making this comparison, do you  
24 believe we should essentially think about rider DMR  
25 as a distribution charge?

1           A.    It's not a charge in that it is intended  
2   to recover distribution costs, but it is a charge  
3   imposed on distribution customers. So in that  
4   context it could be considered that.

5           Q.    And so when you compare rider DMR  
6   revenues to distribution rates, is that because you  
7   believe that distribution rates are the most  
8   analogous type of rate to rider DMR?

9           A.    I don't think it's analogous at all.  
10   Distribution rates are -- are rates that cover  
11   distribution costs. The DMR has nothing to do with  
12   costs whatsoever.

13          Q.    If --

14          A.    It's just a charge.

15          Q.    Sure. If it's not analogous at all,  
16   what's the point of this paragraph?

17          A.    Well, because the -- because DP&L's job  
18   is to provide -- as regulated by this Commission is  
19   to provide utility monopoly distribution service.  
20   It's regulated by the FERC to provide regulated  
21   monopoly transmission service. The DMR, if approved  
22   by this Commission, then would be charged to  
23   distribution customers. And so that's why I think  
24   the comparison is relevant.

25               MR. ALEXANDER: Okay. No further

1 questions. Thank you, your Honor.

2 EXAMINER PRICE: Mr. McNamee?

3 MR. McNAMEE: Mr. Sharkey asked all my  
4 questions. I have nothing left. Thank you.

5 MR. MICHAEL: Did you share outlines  
6 beforehand?

7 MR. McNAMEE: And better than I would  
8 have, by the way.

9 EXAMINER PRICE: Redirect?

10 MR. MICHAEL: None, your Honor.

11 EXAMINER PRICE: Thank you, Mr. Kahal.  
12 You are excused.

13 THE WITNESS: Thank you, your Honor.

14 MR. MICHAEL: We move for the admission  
15 of OCC Exhibits 12 and 12A, your Honor.

16 EXAMINER PRICE: Any objections?

17 Seeing none, those will be admitted.

18 (EXHIBITS ADMITTED INTO EVIDENCE.)

19 EXAMINER PRICE: At this time we will  
20 break for lunch. Let's come back at 1 o'clock.

21 Off the record.

22 (Thereupon, at 12:00 noon a lunch recess  
23 was taken.)

24 - - -

25

Monday Afternoon Session,  
April 10, 2017.

- - -

EXAMINER WALSTRA: Go back on the record.  
OCC, call your next witness.

MR. KUMAR: OCC would like to call Jim  
Williams.

EXAMINER WALSTRA: Raise your right hand.  
(Witness sworn.)

EXAMINER WALSTRA: Thank you. Please be  
seated. State your name and business address,  
please.

THE WITNESS: My name is James D.  
Williams. My business address is 10 West Broad  
Street, Suite 1800, Columbus, Ohio 43215.

EXAMINER WALSTRA: Thank you.  
Go ahead.

MR. KUMAR: Your Honor, may I have the  
supplemental direct testimony of Mr. Williams marked  
as OCC Exhibit 13.

EXAMINER WALSTRA: So marked.  
(EXHIBIT MARKED FOR IDENTIFICATION.)

MR. KUMAR: The direct testimony of  
Mr. Williams marked as OCC Exhibit 13A.

EXAMINER WALSTRA: So marked.

1 (EXHIBIT MARKED FOR IDENTIFICATION.)

2 MR. KUMAR: And the errata filed  
3 November 30, 2016, as -- which was corrected Exhibit  
4 JDW-5 to his direct marked as OCC Exhibit 13B.

5 EXAMINER WALSTRA: So marked.

6 (EXHIBIT MARKED FOR IDENTIFICATION.)

7 - - -

8 JAMES D. WILLIAMS

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

11 DIRECT EXAMINATION

12 By Mr. Kumar:

13 Q. Now, Mr. Williams, on whose behalf are  
14 you appearing?

15 A. I am appearing on behalf of the Office of  
16 the Ohio Consumers' Counsel.

17 Q. And do you have your prepared testimony  
18 with you on the stand?

19 A. Yes, I do.

20 Q. Do you have any changes or corrections to  
21 your testimony?

22 A. I have a few. In my supplemental -- let  
23 me start with the supplemental testimony, Exhibit 13.  
24 On page 12, line 10, deleting the word "accurate" and  
25 changing that with the word "complete."

1                   On page 19, line 1, I am changing ".8" to  
2                   ".88."

3                   EXAMINER PRICE: Can I have that  
4                   reference again, please?

5                   THE WITNESS: Yes. That is on page 19  
6                   and it's line 1.

7                   A. In the exhibit that is marked 13A, on  
8                   page 6, line 6, I'm deleting the word "a," so it  
9                   should be "to pursue costly and unreasonable  
10                  charges."

11                  On page 13 in the footnote 27, the  
12                  reference should be to "Ohio Administrative Code  
13                  4901:1-26."

14                  Q. Do you mean "1-10-26"?

15                  A. "1-10-26," thank you.

16                  And then on page 17, line 3, the  
17                  reference should be to "Ohio Administrative Code  
18                  4901:1-10" -- "1-10-10."

19                  Q. Okay. Do you have any other changes or  
20                  corrections to your testimony?

21                  A. I do not.

22                  Q. If I asked you those same questions  
23                  today, would your -- in the exhibits marked OCC  
24                  Exhibits 13, 13A, and 13B, would your answers be the  
25                  same?



1           A.     Yes, they would be.

2           MR. KUMAR:   Your Honor, the OCC moves for  
3 admission of Exhibits OCC 13, 13A, and 13B and would  
4 like to make the witness available for  
5 cross-examination.

6           EXAMINER WALSTRA:   Thank you.

7           MS. BOJKO:   Your Honor, I'm sorry.   Could  
8 I have the change from ".8" that was on page 19, what  
9 the number should be?

10          EXAMINER WALSTRA:   Sure.

11          MR. KUMAR:   I believe it should be ".88."  
12 This is his supplemental direct.

13          MS. BOJKO:   Thank you.

14          EXAMINER WALSTRA:   Mr. Sharkey.

15          MR. SHARKEY:   Thank you, your Honor.

16                                 - - -

17                                 CROSS-EXAMINATION

18         By Mr. Sharkey:

19                 Q.     Mr. Williams, we've met on the phone a  
20 few times and in person I think occasionally, but my  
21 name is Jeff Sharkey, and I represent The Dayton  
22 Power and Light Company.

23                 A.     Good afternoon, Mr. Sharkey.

24                 Q.     Good afternoon.   I am going to start by  
25 asking some questions about the serious negotiation

1 prong of the Commission's three-part test. And in  
2 particular it's true, isn't it, that you did not  
3 intend -- attend any of the bargaining sessions  
4 leading to the stipulation?

5 A. I don't believe that I was at any of the  
6 bargaining sessions on this specific case.

7 Q. Okay. And you do not know how many  
8 sessions there were, right?

9 A. No, I don't.

10 Q. You do know that OCC's lawyers attended  
11 sessions?

12 A. I'm assuming our lawyers were there. I  
13 don't know for sure who was there or when.

14 Q. You are not rendering an opinion on  
15 whether there was serious bargaining at those  
16 sessions, correct?

17 A. The opinion that I'm rendering is that  
18 whether or not there was serious bargaining or not,  
19 there wasn't serious bargaining on behalf of  
20 residential customers as a whole.

21 EXAMINER PRICE: So you are saying your  
22 lawyers attended sessions but did not seriously  
23 bargain on behalf of the residential customers; is  
24 that your testimony?

25 THE WITNESS: There was bargaining on

1     behalf of residential customers. What I am saying is  
2     I don't believe this -- this settlement though  
3     addresses the needs of residential customers.

4             EXAMINER PRICE: But you are not  
5     disputing there was serious bargaining on behalf of  
6     residential customers by your attorneys.

7             THE WITNESS: No. There was bargaining.

8             MS. BOJKO: Could you turn your mic on,  
9     please.

10            Q.     (By Mr. Sharkey) And you do not dispute  
11     that the signatories to the stipulation are capable  
12     and knowledgeable, correct?

13            A.     I am not disputing that.

14            Q.     You understand the Commission staff  
15     signed the stipulation, right?

16            A.     I do understand that.

17            Q.     And it's their responsibility to look out  
18     for the interests of all constituents?

19            A.     I'm not exactly sure. I know by statute  
20     what staff -- or who staff represents or what exactly  
21     those interests are. I believe that staff's  
22     interests are -- from my own experience are usually  
23     in trying to balance interests between parties.

24            Q.     But you would agree they represent the  
25     interests of all the constituents, correct?

1           A.    I believe so.

2           Q.    Okay.  And you don't claim that staff  
3 disregarded its duty to consider the interests of  
4 residential customers when it signed the stipulation,  
5 do you?

6           A.    I'm not making that allegation.

7           Q.    You are not aware of any facts that  
8 suggest staff did not take the settlement process  
9 seriously, are you?

10           MR. KUMAR:  Objection.  Your Honor, he  
11 has already testified he wasn't a part of the  
12 settlement process.  I think this is outside the  
13 scope of his testimony at this point.

14           EXAMINER WALSTRA:  Overruled.

15           A.    Can you repeat the question?

16           Q.    I'll do it again.  You are not aware of  
17 any facts that suggest staff did not take the  
18 settlement process seriously, are you?

19           A.    I am not aware of any facts.

20           Q.    Okay.  You are also aware Edgemont, Ohio  
21 Partners for Affordable Energy, and People Working  
22 Cooperatively signed the stipulation, right?

23           A.    That's my understanding.

24           Q.    And you understand that those  
25 organizations represent the interests of low-income

1 customers?

2 A. I'm not exactly sure. I believe that  
3 it's predominantly low-income customers, but I'm not  
4 exactly sure what those interests were in this case.

5 Q. You are also aware the City of Dayton  
6 signed the stipulation, right?

7 A. I am aware of that.

8 Q. And you believe the City of Dayton  
9 represents the interests of all of its residents?

10 A. I believe the City of Dayton would  
11 represent the interests of the City of Dayton which  
12 could include residents as well as other interests.

13 Q. You understand that the next element the  
14 Commission needs to consider is whether the  
15 stipulation as a package benefits the public  
16 interest, right?

17 A. That's my understanding.

18 Q. Let me ask you some questions about  
19 whether you evaluated the stipulation as a package.  
20 As an initial matter, you are aware that AES agreed  
21 in the stipulation to refrain from taking dividend  
22 payments for a period of time?

23 A. I believe I read those words.

24 Q. Okay. It's true, isn't it, you did not  
25 consider that element of the stipulation in preparing

1 your testimony?

2 A. I did not consider it.

3 Q. Okay. You are also aware that AES agreed  
4 to refrain from collecting tax sharing payments for a  
5 period of time in the stipulation, right?

6 A. I'm aware of that.

7 Q. And, again, you did not consider that  
8 provision in preparing your testimony, correct?

9 A. I did not.

10 Q. Okay. And you also know that AES agreed  
11 to convert certain tax liabilities at DPL Inc. to  
12 equity?

13 A. I read that.

14 Q. And, again, you did not consider that  
15 provision in preparing your testimony?

16 A. I did not. Again, my interest -- my  
17 review of the settlement though had more to do with  
18 DP&L and DP&L's ability to provide safe and reliable  
19 service, not AES.

20 Q. We'll come to that. You are aware that  
21 DP&L agreed to sell its generating assets to an  
22 affiliate in the stipulation, right?

23 A. I read those words.

24 Q. Okay. You did not consider that in  
25 evaluating the stipulation, did you?

1           A.    I did not.

2           Q.    Okay.  And you are aware that DP&L agreed  
3   in the stipulation to institute a sales process for  
4   certain of its coal-fired assets?

5           A.    I read that.

6           Q.    And, again, you did not consider that  
7   provision in preparing your testimony, did you?

8           A.    I did not.

9           Q.    You saw the stipulation provides SSO  
10  service will be provided through a competitive  
11  bidding process, right?

12          A.    Yes.

13          Q.    Okay.  And you're supportive of SSO  
14  service being provided through the competitive  
15  bidding process, right?

16          A.    Yes.  I believe that that process could  
17  occur with or without this settlement.

18          Q.    But you don't know whether or not  
19  competitive bidding is required in Ohio, do you?

20          A.    I don't believe that there's a specific  
21  provision for -- for a competitive bidding process.  
22  I do know it would be unreasonable not to use a  
23  competitive bidding process if it would result in  
24  lower, just, and reasonable rates for consumers.

25          Q.    You mentioned safe and reliable service.

1 Let me ask you some questions about that. As an  
2 initial matter, you agree with me it's very important  
3 that DP&L be able to provide safe and reliable  
4 service, right?

5 A. As DP&L has been doing for many, many  
6 years, yes.

7 Q. You read the testimony of DP&L Witness  
8 Malinak, right?

9 A. I did.

10 Q. Okay. And his testimony contains  
11 detailed financial projections and charts at the  
12 back, right?

13 A. I recall seeing those projections.

14 Q. Okay.

15 A. I didn't focus specifically on those.

16 Q. All right. So you don't disagree with  
17 the projections that Mr. Malinak provides, right?

18 A. There are other witnesses that are more  
19 capable to talk about Mr. Malinak's financial  
20 projections like Mr. Kahal.

21 Q. So you do not -- just so I have a clean  
22 record, you don't disagree with those projections,  
23 right?

24 A. I have nothing to disagree with.

25 Q. Okay. And you understand that



1 Mr. Malinak offers an opinion that DP&L's financial  
2 integrity is at risk, right?

3 A. I read those words.

4 Q. Okay. And there is nothing in your  
5 testimony that contradicts that assertion, right?

6 A. I believe that my testimony addresses  
7 more the ability of DP&L to provide safe and reliable  
8 service.

9 Q. Okay. There's nothing in your testimony  
10 that contradicts Mr. Malinak's assertion that DP&L's  
11 financial integrity is at risk, right?

12 A. I don't address that issue in my  
13 testimony.

14 Q. And you agree that to provide safe and  
15 reliable service, DP&L needs sufficient funds to do  
16 so, right?

17 A. Yes.

18 Q. Changing topics, you are aware that the  
19 Commission issued an order approving a DMR for  
20 FirstEnergy, correct?

21 A. Yes, I am.

22 Q. You read that order, right?

23 A. I don't know that I've read it as much as  
24 I'm aware of some of those kind of -- the high points  
25 of that -- that order.

1           Q.    Nothing in your testimony asserts that  
2   the DMR is inconsistent with that Commission order,  
3   correct?

4           MR. KUMAR:  Objection.  Your Honor, it's  
5   calling for a legal opinion on the part of  
6   Mr. Williams.

7           EXAMINER WALSTRA:  Mr. Sharkey.

8           MR. SHARKEY:  I am just asking him to  
9   verify there is nothing in his opinions that suggests  
10  that DP&L's DMR is inconsistent with that order, your  
11  Honor.  Interpreting Commission orders is something  
12  that witnesses do all the time.  Sometimes Commission  
13  orders are very legal, sometimes they are very  
14  factual, and sometimes they are a mix of both.  And  
15  certainly I wouldn't expect this witness to be  
16  testifying as to the law, but I think it's  
17  appropriate to ask him, you know, whether he asserts  
18  that it violates the Commission's order.

19          EXAMINER WALSTRA:  If he knows, he can  
20  answer.

21          A.    I believe the facts in this case are  
22  completely different from the facts in the Day -- in  
23  the FirstEnergy case, and the facts in this case do  
24  not support a DMR.  I don't believe that the office  
25  of OCC supported a DMR with FirstEnergy either, but

1 the facts in this case are completely different.  
2 There are other mechanisms for DP&L to address its  
3 obligation for providing safe and reliable service  
4 including expediting completion of its base rate case  
5 to the extent it needs additional funds.

6 MR. SHARKEY: Your Honor, I would move to  
7 strike the entire answer. It was not responsive to  
8 the question your testimony does not assert DP&L's  
9 DMR is inconsistent with the FirstEnergy order.

10 MR. KUMAR: Your Honor, he asked for  
11 Mr. Williams' regulatory opinion, and Mr. Williams  
12 gave it. I think it is responsive.

13 EXAMINER WALSTRA: Overruled.

14 Q. (By Mr. Sharkey) Mr. Williams, it's true,  
15 isn't it, there is nothing in your supplemental or  
16 direct opinions that cites to the FirstEnergy DMR  
17 order?

18 A. I do not cite to the FirstEnergy order.  
19 I believe that Dayton Power and Light has its own  
20 pending ESP and that's the matter that we are  
21 addressing today, not FirstEnergy's.

22 Q. You are aware that the Commission has  
23 announced plans to institute a PowerForward  
24 Initiative to establish parameters for grid  
25 modernization, right?

1           A.    I am very familiar with it.

2           Q.    Okay.  And it's your hope and expectation  
3   that that initiative will result in cost effective  
4   grid modernization plans, right?

5           A.    Yes.

6           Q.    You believe that DP&L shouldn't spend  
7   money on grid modernization until the Commission  
8   completes its PowerForward Initiative and establishes  
9   clear requirements for grid modernization; is that  
10   fair?

11          A.    That's very fair.

12          Q.    Okay.  And assuming the -- that DP&L  
13   implements the Commission's plans in a cost effective  
14   and prudent manner, you support cost recovery for  
15   DP&L, right?

16          A.    Yes, I do, although that cost recovery  
17   may be through future base rate cases, not through a  
18   rider as -- as is addressed within -- within this  
19   settlement.

20          Q.    You are aware that Ohio law permits  
21   single-issue ratemaking, correct?

22          A.    I am familiar with that.  I don't believe  
23   that Ohio law requires single-issue ratemaking.  I  
24   believe that there are certain applications where  
25   maybe single-issue ratemaking might be appropriate.

1 There are other situations where it's not. I've seen  
2 nothing in PowerForward, DMR, really practically  
3 anything within this settlement that would lead me to  
4 believe there needs to be single-issue ratemaking.

5 Q. Turn, if you would, to your supplemental  
6 testimony, page 12, line 10.

7 A. I'm there.

8 Q. You made a change there, and you struck  
9 the word -- you struck the word "accurate" and  
10 inserted the word "complete," right?

11 A. I did.

12 Q. I want to make sure I got a clean record.  
13 You are not asserting that there are -- were  
14 inaccuracies in Mr. Malinak's description of the  
15 economic condition in DP&L's service territory on the  
16 pages you cite which were 37 and 38 of his testimony.

17 A. I just believe that there was a more  
18 complete -- there was more complete information than  
19 he provided.

20 Q. Just so my record is clear, you are not  
21 claiming his testimony was inaccurate, right?

22 A. I believe that I have corrected my  
23 testimony to say complete. Complete means with the  
24 information that I provided I think the record is  
25 more complete.

1           Q.    Let me ask you about DP&L's proposal for  
2   a distribution investment rider.  It's true, isn't  
3   it, that you have not conducted any analysis to  
4   determine whether DP&L would have sufficient funds  
5   available to implement the DIR programs without a  
6   distribution investment rider?

7           A.    Again, it seems to me that DP&L is  
8   already recovering the costs of investments that it  
9   makes in infrastructure modernization the way that it  
10  is addressed in this -- this settlement.  It's just  
11  part of the normal course of operating and  
12  maintaining its distribution system.  I've not seen  
13  any indication that there's infrastructure  
14  modernization that's going to be occurring through  
15  the DIR.  It's just re -- it's just -- it's just a  
16  different way to recover for the investments that  
17  have been made and that would be made even without a  
18  DIR.

19          Q.    Clear.  It's true, isn't it, that you  
20  have not analyzed DP&L's expenses and revenues to  
21  determine whether DP&L would, in fact, have  
22  sufficient funds available to perform -- engage in  
23  these distribution investment rider investments  
24  without the DIR, right?

25          A.    I would answer that by saying,

1 Mr. Sharkey, that that --

2 EXAMINER PRICE: Mr. Williams, you should  
3 answer it by answering his question. You should  
4 listen carefully to Mr. Sharkey's question and answer  
5 Mr. Sharkey's question directly. And if there is  
6 need for additional information, I am sure your  
7 counsel will ask you that on redirect.

8 A. The answer is, no, I have not.

9 Q. Are you aware that the Commission has  
10 approved riders for FirstEnergy and AEP that are  
11 similar to the DIR that DP&L seeks, correct?

12 A. I believe they are similar.

13 Q. Okay. And you recall that I deposed you  
14 before the amended application -- I'm sorry, the  
15 amended stipulation was filed and then again after  
16 the amended stipulation was filed.

17 A. I do recall that.

18 Q. Okay. So I want to go back to before the  
19 amended stipulation was filed, and you told me then,  
20 I want to make sure it's still true, that on a  
21 proportionate basis DP&L's application sought less  
22 money in its DIR than FirstEnergy and AEP received in  
23 their DIR, right?

24 MR. KUMAR: Objection. If he is going to  
25 refer to the witness's deposition, I would like him

1 to give a copy of that deposition to the witness.

2 EXAMINER WALSTRA: Do you need a copy?

3 THE WITNESS: Yes, I do.

4 EXAMINER WALSTRA: Do you have a copy?

5 MR. SHARKEY: Sure. Happy to. May I  
6 approach, your Honor?

7 EXAMINER WALSTRA: You may.

8 MR. KUMAR: Do you have a page number,  
9 Jeff?

10 MR. SHARKEY: 34 to 35.

11 A. Which page was that, Mr. Sharkey?

12 Q. Yeah. If you would turn to pages 34 and  
13 35 and really starts on page 34, line 19, and you see  
14 there that we are talking about the DIR and AEP and  
15 FirstEnergy's DIRs, right?

16 A. Yes.

17 Q. Okay. And then you told me that DP&L was  
18 seeking on a proportional basis less than FirstEnergy  
19 and less than AEP, correct?

20 MR. KUMAR: Your Honor, again, I just  
21 have a clarification. Are you referring to the DIR  
22 as was proposed before the amended application? The  
23 amended stipulation was filed in --

24 MR. SHARKEY: That is the DIR that was  
25 being discussed at this time because it was before



1 the amended stipulation was filed.

2 MR. KUMAR: Okay.

3 A. And at that time the DIR was  
4 proportionately less than the AEP and FirstEnergy.

5 Q. Okay.

6 A. Of course, now, it's not defined.

7 Q. Well, you agree with me that the DIR  
8 in -- now, let's go to where we are today. We have  
9 an amended stipulation that includes a DIR, right?

10 A. Yes.

11 Q. And you agree that the DIR in the amended  
12 stipulation is even narrower than the DIR that DP&L  
13 had originally proposed.

14 A. I don't agree with that at all.

15 MR. SHARKEY: Your Honor, may I approach?

16 EXAMINER WALSTRA: You may.

17 Q. If you turn, please, to page 76.

18 A. I'm there.

19 Q. Okay. I asked you the question "So it's  
20 true that the DIR in the stipulation is narrower than  
21 the DIR that DP&L had originally proposed?" And your  
22 answer was "It appears to be narrower and limited to  
23 just plant." Did I read that accurately?

24 A. Yes. It only addresses plant but in  
25 the -- in the settlement, there's no longer caps or

1 anything else in terms of what the DIR could cost.

2 It's all been deferred to some other regulatory

3 proceeding.

4 Q. You agree with me it's narrower, right?

5 A. It appears to be addressing only capital,  
6 but I'm not 100 percent sure of that either.

7 Q. You do contest DP&L's recovery of charges  
8 under a variety of rates and riders, correct?

9 A. Yes.

10 Q. You do not claim anywhere in your  
11 testimony that any of the amounts to be recovered  
12 through the stipulation were imprudently incurred,  
13 correct?

14 A. Can you be more specific with what  
15 specific charges you are referring to?

16 Q. You don't claim that any amounts to be  
17 recovered by DP&L under the stipulation were  
18 imprudently incurred, do you?

19 A. I wouldn't know.

20 Q. OCC did have the opportunity to conduct  
21 discovery in this case, didn't it?

22 A. And OCC did but there are many -- there  
23 are several items that are being proposed under the  
24 settlement that are items that are somewhat --  
25 whether or not the costs were prudently incurred are

1 really the subject of a distribution rate case and a  
2 staff report that needs to come out at some point in  
3 time. For example, the rider --

4 MR. SHARKEY: Your Honor --

5 A. -- DIR --

6 MR. SHARKEY: -- I move to strike. The  
7 only question to him was OCC had an opportunity to  
8 conduct discovery in this case. The answer was  
9 unresponsive.

10 EXAMINER WALSTRA: I am going to grant  
11 the motion.

12 Q. Please turn in your supplemental  
13 testimony to page 16. You can see, for example, on  
14 line 8, that answer, that you are talking about the  
15 DIR and the DMR, correct?

16 A. Yes.

17 Q. Okay. Then if you would turn to the next  
18 page, page 17, starting on line 2, I am not going to  
19 read all of your answer, just the part I am  
20 interested in, you state "There are no conditions  
21 attached, DP&L is free to use the revenues collected  
22 from customers as they desire, including subsidizing  
23 uneconomic generation." Did I read that accurately?

24 A. You did.

25 Q. Do you have available to you a copy of

1 the amended stipulation?

2 A. I did bring a copy.

3 Q. Please turn, if you would, to page 5.  
4 Subparagraph b, you understand that paragraph  
5 identifies what the cash from the DMR could be used  
6 for, correct?

7 A. That's how I read that.

8 Q. And there is nothing in that paragraph  
9 that authorizes the use of cash for generation, is  
10 there?

11 A. Just transmission and distribution.

12 Q. Turn then to page 6, paragraph d. That  
13 paragraph identifies what the -- what can be included  
14 for recovery in the distribution investment rider,  
15 correct?

16 A. Yes. As I mentioned during my  
17 deposition, that comment was more related to the DMR,  
18 not DIR.

19 Q. In any event just so our record is clear,  
20 there is nothing in that subparagraph that permits  
21 the use of -- permits the recovery rather of  
22 generation-related costs through the DIR, right?

23 A. Appears to be just distribution capital.

24 Q. Let me ask you about reliability ratings.  
25 Do you agree with DP&L has been achieving its

1 reliability ratings, correct?

2 A. Yes, it has.

3 Q. Okay. And DP&L's had above average  
4 customer satisfaction ratings, right?

5 A. Yes, it has.

6 Q. Okay. In your direct testimony please  
7 turn to Exhibit No. 14, JDW-14. It's about  
8 two-thirds of the way back.

9 A. I'm there.

10 Q. Okay. In that document is a customer  
11 perception survey that was performed by Metrix  
12 Matrix?

13 A. Right. That's correct.

14 Q. Okay. And you've cited to and discussed  
15 this survey in your testimony, correct?

16 A. I did.

17 Q. Okay. And turn, if you would, within the  
18 document to page 6034.

19 A. I'm there.

20 Q. Okay. And as you can see by reading the  
21 introductory paragraph, the survey asks residential  
22 customers to write -- rate between 1, which is not  
23 important at all, and 10, which is very important,  
24 their responses to three different questions, right?

25 A. That's correct.

1           Q.    Okay.  So the first question was "Could  
2   you indicate how important it is" -- "it is to you to  
3   reduce by half the frequency of sustained outages,"  
4   right?

5           A.    Yes.

6           Q.    Okay.  And we can see in the chart at the  
7   bottom that the mean important rating of reducing by  
8   half the frequency of sustained outages was 7.2.

9           A.    That's correct.

10          Q.    Okay.  And you can also see that the next  
11   question was "Could you indicate how important it is  
12   to you to reduce by half the duration of sustained  
13   outages," and the mean important rating was 7.4,  
14   correct?

15          A.    That is correct.

16          Q.    And then the last question was "Could you  
17   indicate how important it is to you to reduce by half  
18   the number of momentary power outages," and the mean  
19   importance rating was 6.2, right?

20          A.    That's correct.

21          Q.    And you agree those three questions all  
22   relate to reliability of the system, correct?

23          A.    In this context, yes.

24          Q.    Okay.  Turn to page to 6035 which is a  
25   continuation of the same document but relates to a

1 survey of businesses as you understand it, right?

2 A. Yes.

3 Q. Okay. Keep turning, if you would, then  
4 to 6046. Are you there?

5 A. I'm there.

6 Q. Okay. And this is a document that  
7 looks -- or page that looks much like the page I just  
8 asked you about only directed to businesses, right?

9 A. Right.

10 Q. Contains the same questions and  
11 identifies the mean importance rating, right?

12 A. That's what it appears to do.

13 Q. Without going through each one, the  
14 importance ratings that it has, the mean importance  
15 ratings are 7.7, 7.8, and 7.0, correct?

16 A. That is what it appears to be.

17 MR. SHARKEY: Your Honor, I have no  
18 further questions.

19 EXAMINER WALSTRA: Thank you.

20 Go back around the room.

21 - - -

22 CROSS-EXAMINATION

23 By Mr. Keaney:

24 Q. Mr. Williams, can I have you turn to page  
25 7 of your testimony, line 9, and let me know when you

1 get there.

2 A. Which testimony?

3 Q. Your supplemental testimony.

4 A. I'm there.

5 Q. Okay. At page 7, line 9, you say that  
6 the vast majority of customers are not represented in  
7 the settlement. Do you see that?

8 A. That is correct.

9 Q. And at the same page if you go down to  
10 your footnote 15, you say that there are some 515,000  
11 customers in the DP&L service territory; is that  
12 right?

13 A. That's correct.

14 Q. And of that 515,000, approximately  
15 456,000 are residential customers; is that right?

16 A. That's my understanding.

17 Q. And if I do the math correctly, that  
18 leaves about 59,000 customers left which are  
19 commercial and industrial customers; is that right?

20 A. Yes.

21 Q. You said in your testimony the City of  
22 Dayton is the largest municipality in the DP&L  
23 service territory; isn't that correct?

24 A. I believe it is, subject to check.

25 Q. Okay. So just to check, in your



1 supplemental testimony on page 7, line 5, when you  
2 refer to "the largest municipality in the DP&L  
3 service territory," you are referring to the City of  
4 Dayton, are you not?

5 A. I am.

6 Q. Okay. So just to clarify here, in DP&L's  
7 service territory there are more residential  
8 customers that live in the City of Dayton than any  
9 other municipality; is that fair to say?

10 A. I believe that to be the case.

11 Q. Okay. And isn't it true in the latest  
12 U.S. Census data approximately 140,000 residents live  
13 in the City of Dayton?

14 A. That I'm not 100 percent sure of, how  
15 many residents are in Dayton.

16 Q. Okay. Subject to check?

17 A. Subject to check.

18 Q. Okay. In your testimony you state that  
19 the poverty level in the City of Dayton is 35.5  
20 percent; is that right?

21 A. That's correct.

22 Q. And you took that information in footnote  
23 35 on page 13 of your testimony from the "Ohio  
24 Poverty Report" which was produced by the Ohio  
25 Development Services Agency; is that right?

1           A.    That is correct.

2           Q.    You relied on that report when you were  
3    drafting your supplemental testimony; is that right?

4           A.    I did.

5           Q.    You are familiar with the contents of  
6    that report?

7           A.    Very.

8           Q.    Okay.  According to that report 45,910  
9    residents in the City of Dayton are low-income  
10   customers; is that right?

11          A.    That sounds about right.

12          Q.    Okay.  Do you have a copy of your -- of  
13   the Ohio Poverty Report?

14          A.    I did not bring it with me.

15               MR. KEANEY:  Your Honor, may I approach?

16               EXAMINER WALSTRA:  You may.

17          Q.    Mr. Williams, you had cited page 65,  
18   Table A6 of that report in your footnote 35 on page  
19   13; isn't that right?

20          A.    That looks right.

21          Q.    If you can follow me here, the City of  
22   Dayton, here it shows on that left-hand column  
23   129,412 residents, and of that 129,412 residents,  
24   45,910 residents are rated as poor or low income; is  
25   that true?

1           A.    Yeah.  Now, of course, in this context  
2   the 129,000 I believe to be the -- is persons for  
3   whom poverty status was determined.  These aren't  
4   necessarily individual residents, customers of DP&L.

5           Q.    Okay.  But the 45,910 number is where  
6   your 35.5 percent number came from you cite in your  
7   supplemental testimony, is it not?

8           A.    Yes, it is.

9           Q.    Okay.

10           EXAMINER WALSTRA:  Are you going to mark  
11   this as an exhibit?

12           MR. KEANEY:  Yes, your Honor.  Thank you.  
13   It's Dayton Exhibit 1, City of Dayton Exhibit 1,  
14   please.

15           EXAMINER WALSTRA:  So marked.

16           (EXHIBIT MARKED FOR IDENTIFICATION.)

17           Q.    You had also cited in your supplemental  
18   testimony there are approximately 30,000 low-income  
19   customers in DP&L's service territory that are  
20   Percentage of Income Payment Plan Program; isn't that  
21   true?

22           A.    That is correct.

23           Q.    And just so the record is clear, we can  
24   agree to call those PIPP customers?

25           A.    Yes.

1           Q.    How many of the 30,000 PIPP customers  
2           reside in the City of Dayton?

3           A.    I do not know.   Dayton -- DP&L serves  
4           approximately 30,000 PIPP customers across its entire  
5           service territory.

6           Q.    And from that report we just looked at,  
7           about 45,000, almost 46,000 residents in the City of  
8           Dayton are listed as poor or low income?

9           A.    That is true.

10          Q.    It's fair to say at least half or more  
11          PIPP customers reside in the City of Dayton?

12          A.    I don't know what the exact numbers are.

13          Q.    Can you say that at least some of those  
14          PIPP customers reside in the City of Dayton?

15          A.    There are PIPP customers in Dayton.

16          Q.    In addition to the City of Dayton, there  
17          are also three other groups representing low-income  
18          customers that signed the amended stipulation,  
19          correct?

20          A.    That's my understanding.

21          Q.    Is that a "yes"?

22          A.    Yes.

23          Q.    In addition to those resident customers,  
24          you would also agree there are commercial and  
25          industrial customers in DP&L's service territory?

1           A.    Yes.

2           Q.    Other than Wal-mart, are you aware of any  
3 other commercial customer who is opposed to amending  
4 this stipulation?

5           A.    I don't know of anybody.

6           Q.    Let me clarify my question for the  
7 record, please. Other than Wal-mart, are you aware  
8 of any other commercial customer who is opposing the  
9 amended stipulation?

10          A.    No. I don't know of any.

11          Q.    Okay. Are you aware of any industrial  
12 customer who is opposing the amended stipulation?

13          A.    No.

14          Q.    Are you aware of any trade association  
15 who is opposing the amended stipulation?

16          A.    I wouldn't know.

17          Q.    Is that a "no"?

18          A.    I don't know.

19          Q.    In fact, many of those commercial and  
20 industrial customers have signed the amended  
21 stipulation as either a signatory party or as a  
22 nonopposing party; isn't that true?

23               MR. KUMAR: Objection. I don't think  
24 your -- you never specified which trade organizations  
25 you were discussing. You just said trade

1 organizations and then.

2 MR. KEANEY: I referred to trade  
3 organization in my prior question, your Honor. What  
4 I am asking now is simply are any of the industrial  
5 or commercial customers that I just previously asked  
6 either a signatory or a nonopposing party of the  
7 amended stipulation. I am not referring to trade  
8 associations in this question.

9 EXAMINER WALSTRA: Overruled.

10 A. If I look at the amended settlement, I  
11 see a number of different signatory parties. I  
12 recall in Ms. Schroder's testimony a list of  
13 different parties that had been involved in the  
14 settlement discussions. That's the only list that I  
15 would be aware of. I don't know if customer -- if  
16 other customers are -- are opposed to this. I hadn't  
17 looked at the docket to see if customers, for  
18 example, have filed letters, expressed opposition  
19 through the docket, other ways in which customers  
20 might do that.

21 Q. Okay. Let me go back to our discussion  
22 about whether you believe there is a diversity of  
23 interest that are supporting this amended  
24 stipulation. You explained in footnote 12, which is  
25 on page 6 of your supplemental testimony -- let me

1 know when you are there.

2 A. I'm there.

3 Q. That the Commission takes into account  
4 the diversity of interest as part of that first prong  
5 of the stipulation assessment; isn't that true?

6 A. That's my understanding.

7 Q. Okay. And OCC purports to represent some  
8 456,000 residential customers in DP&L's service  
9 territory; is that true?

10 A. OCC statutorily represents all  
11 residential customers in the DP&L service territory.

12 Q. So of the 456,000 you cited, you then --

13 A. We purport -- OCC represents those  
14 customers. We are not merely purporting anything.

15 Q. Okay. So of those 496,000 residential  
16 customers, you said that that's the vast majority of  
17 customers in DP&L's service territory; isn't that  
18 true?

19 A. That is correct.

20 MR. KUMAR: Wait. I would like to  
21 clarify just for the record, did you say 496 or --

22 MR. KEANEY: 456.

23 A. Vast, correct. The vast majority of the  
24 456,000 DP&L residential customers who are  
25 represented by the Ohio Consumers' Counsel I don't

1 believe are represented in this amended settlement.

2 Q. Okay. You had indicated earlier that  
3 there can be no diversity of interests represented in  
4 this settlement if the vast majority of customers do  
5 not support this settlement; isn't that true?

6 A. The vast majority in that context is the  
7 vast majority of customers who are paying for this  
8 settlement are not represented.

9 Q. If I can refer you to page 7 of your  
10 supplemental testimony, line 9.

11 A. I'm there.

12 Q. Excuse me, line 8. Begins "there is  
13 hardly a diversity of interests represented in this  
14 Settlement when the interests of the vast majority of  
15 customers who pay DP&L electric bills are not  
16 supporting the Settlement."

17 A. I believe that's what I just said.

18 Q. Okay. So it is your position as the  
19 representative of the vast majority of DP&L  
20 customers, paying customers, OCC's support of the  
21 settlement would be required for there to be a  
22 diversity of interest that would be represented in  
23 this settlement; isn't that true?

24 MR. KUMAR: Your Honor, may I have that  
25 question reread?



1 EXAMINER WALSTRA: Sure. Please.

2 (Record read.)

3 A. My answer to that is that I would trust  
4 that the Commission would not approve a settlement  
5 that doesn't include the statutory representative of  
6 the vast majority of the DP&L customers.

7 EXAMINER PRICE: Actually, Mr. Williams,  
8 the Commission has rejected that premise before, has  
9 it not?

10 THE WITNESS: I believe that to be the  
11 case, although I believe each case speaks for itself.  
12 I would hope that the Commission --

13 EXAMINER PRICE: The Commission has on  
14 multiple occasions rejected the premise that any one  
15 party should be able to review a settlement and the  
16 Commission was upheld by the Ohio Supreme Court; is  
17 that correct?

18 THE WITNESS: In terms of the court, I'm  
19 not sure, but I do know that the PUCO has in the past  
20 different times not supported that premise. I would  
21 hope that would not be the case with this settlement.

22 EXAMINER PRICE: Every case is different.

23 Q. (By Mr. Keaney) So I just have one more  
24 question. You are not aware of any Commission  
25 precedent that OCC's support of a stipulation is

1 necessary to find that prong one of the stipulation  
2 assessment is satisfied; isn't that true?

3 A. I believe that to be true.

4 MR. KEANEY: I have no more questions,  
5 your Honor.

6 EXAMINER WALSTRA: Thank you.

7 Mr. Oliker?

8 MR. OLIKER: Thank you, your Honor.

9 - - -

10 CROSS-EXAMINATION

11 By Mr. Oliker:

12 Q. Just a few questions for you today,  
13 Mr. Williams. Am I correct that your testimony  
14 recommends that the Commission not approve the  
15 uncollectible expense rider?

16 A. That is my testimony.

17 Q. Do you understand that the proposed  
18 uncollectible expense rider would have a bypassable  
19 and nonbypassable component?

20 A. That's my reading of the amended  
21 settlement.

22 Q. And you understand that the bypassable  
23 component of the uncollectible expense rider would  
24 relate to the receivables associated with the full  
25 service generation?

1           A.    Can you repeat the question, please?

2           Q.    Do you understand that the uncollectible  
3   expense rider proposed by the stipulation would have  
4   a bypassable component that relates to uncollected  
5   receivables associated with default service  
6   bypassable generation rates?

7           A.    Yes.

8           Q.    And nothing in your testimony suggests  
9   that uncollectible expenses associated with default  
10   service generation don't exist.

11          A.    That's not my testimony.

12               MR. OLIKER:  That's all the questions I  
13   have, your Honor.  Thank you, Mr. Williams.

14               EXAMINER WALSTRA:  Thank you.

15               Mr. Pritchard?

16               Staff?

17               MR. McNAMEE:  No questions.

18                       - - -

19                       EXAMINATION

20   By Examiner Price:

21           Q.    I just had a couple.  Could you turn to  
22   page 16 of your testimony, line 10.

23           MS. BOJKO:  Supplemental?

24           EXAMINER PRICE:  Yeah, supplemental, line  
25   10.

1           A.    I'm there.

2           Q.    Understanding you're not an attorney, I  
3 am not asking for a legal conclusion, but you state  
4 "The DIR is contrary to state law to the extent that  
5 any investments are not specifically related to  
6 distribution infrastructure modernization"; is that  
7 correct?

8           A.    That is correct.

9           Q.    And then you cite 4928.143(B) (2) (h); is  
10 that correct?

11          A.    I do.

12          Q.    But 4928 -- 4928.143(B) (2) (h) authorizes  
13 a number of different provisions besides a  
14 distribution modernization rider; is that correct?

15          A.    Yes. I believe it's not limited to just  
16 that.

17          Q.    Including single-issue ratemaking.

18          A.    Yes.

19          Q.    Is it fair to characterize the DIR as  
20 single-issue ratemaking?

21          A.    I believe that it is.

22          Q.    So your statement is not correct.

23          A.    No. I believe that the statement is  
24 correct. What I am trying to point out, your Honor,  
25 is that there's -- there's a difference between the

1 collection -- the investments that are necessary to  
2 just maintain the operation, maintenance of a  
3 distribution system and the investments that are  
4 purported to provide some type of distribution  
5 modernization.

6 Q. That's not my question. Your testimony  
7 is -- it says it's "contrary to state law," but you  
8 agree that the same state law you cite to would  
9 authorize the DIR single-issue ratemaking; is that  
10 correct?

11 A. I believe that that statute supports  
12 single-issue ratemaking, but using the single-issue  
13 ratemaking for recovery of routine maintenance and  
14 investments that are needed for the routine  
15 maintenance of the distribution system are governed  
16 by more traditional ratemaking.

17 Q. Is it not possible that the recovery of  
18 the same investment could be recovered under two  
19 different statutes, one of which eliminates  
20 regulatory lag, one which doesn't?

21 A. I believe that's been the practice in  
22 some cases. I don't believe that that type of a  
23 practice is needed in Dayton Power and Light though  
24 because Dayton Power and Light does have a pending  
25 rate case that could be expedited to try to achieve.

1           Q.    And the DIR in the amended stipulation  
2 will not be implemented until the conclusion of the  
3 distribution rate case; is that correct?

4           A.    That's not correct. I believe it's the  
5 distribution rate case or another rate case.

6           Q.    Okay. It will not be implemented until  
7 there is a distribution rate case that has been  
8 completed.

9           A.    Unless there has been some type of a base  
10 rate case but it's not necessarily the ongoing rate  
11 case.

12          Q.    If you could turn to pages 18 and 19 of  
13 your testimony. You indicate that the DIR is not  
14 necessary because Dayton's performance is getting  
15 better; is that correct?

16          A.    Yes. Dayton's performance has been good.  
17 I wouldn't necessarily say better. It's been --

18          Q.    If Dayton's performance was getting  
19 worse, would you support the DIR?

20          A.    I think that depends upon what worse  
21 really means.

22          Q.    If the numbers were just reversed.

23          A.    If -- if the -- if a utility was still  
24 meeting its reliability standards but perhaps didn't  
25 have as good a performance from one year to the next,

1 I wouldn't see the need for a DIR.

2 Q. What if it was not meeting its  
3 reliability standards, would you support a DIR in  
4 that circumstance?

5 A. Only to the extent it was distribution  
6 modernization or that it was infrastructure  
7 modernization.

8 Q. So you would not support a DIR in that  
9 circumstance.

10 A. I think each case would have to stand on  
11 its own in terms of what was specifically being  
12 recommended.

13 Q. So really the reliability, whether it is  
14 getting better or worse, is irrelevant because you  
15 think it should be distribution modernization.

16 A. That's how I read 4928.143(B)(2)(h).

17 EXAMINER PRICE: Thank you.

18 EXAMINER WALSTRA: Redirect?

19 MR. KUMAR: May I have a few minutes?

20 EXAMINER WALSTRA: You may.

21 Go off the record for a 5-minute recess.

22 (Recess taken.)

23 EXAMINER WALSTRA: Go back on the record.

24 Mr. Kumar?

25 MR. KUMAR: I have no further questions,

1 your Honor.

2 EXAMINER WALSTRA: Thank you.

3 Thank you, Mr. Williams.

4 THE WITNESS: Thank you.

5 MR. KUMAR: Your Honor, I would move for  
6 the admission of Exhibits 13, 13A, and 13B.

7 EXAMINER WALSTRA: Any objections?

8 Hearing none, they will be admitted

9 (EXHIBITS ADMITTED INTO EVIDENCE.)

10 EXAMINER WALSTRA: Dayton's exhibit?

11 MR. KEANEY: We are not moving.

12 EXAMINER WALSTRA: Okay. Off the record  
13 for a second.

14 (Discussion off the record.)

15 EXAMINER WALSTRA: Go back on the record.

16 OCC, call your next witness.

17 MR. GARVER: I would like to call Bob  
18 Fortney, your Honor.

19 EXAMINER WALSTRA: Raise your right hand.

20 (Witness sworn.)

21 EXAMINER WALSTRA: Thank you. Take a  
22 seat. State your name and business address for the  
23 record.

24 THE WITNESS: My name is Robert B.  
25 Fortney, F as in Frank, O-R-T-N-E-Y. My business



1 address is 10 West Broad Street, Suite 1800,  
2 Columbus, Ohio 43215.

3 EXAMINER WALSTRA: Go ahead.

4 (EXHIBIT MARKED INTO EVIDENCE.)

5 - - -

6 ROBERT B. FORTNEY

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

9 DIRECT EXAMINATION

10 By Mr. Garver:

11 Q. Mr. Fortney, do you have in front of you  
12 what's been marked as OCC Exhibit 14?

13 A. Yes.

14 Q. And can you describe that document for  
15 me, please.

16 A. My direct testimony in Case No.  
17 16-395-EL-SSO.

18 Q. And was that testimony prepared by or at  
19 your direction?

20 A. Yes, it was.

21 Q. And do you have any changes or  
22 modifications you would like to make to your  
23 testimony today, Mr. Fortney?

24 A. No, I don't.

25 Q. And if I asked you the same questions

1 that appear in that testimony, would you answer them  
2 the same today?

3 A. Yes, I would.

4 MR. GARVER: Your Honors, we would like  
5 to make Bob Fortney available for cross-examination.

6 EXAMINER WALSTRA: Thank you.

7 Mr. Sharkey. I'm sorry.

8 - - -

9 CROSS-EXAMINATION

10 By Mr. Ireland:

11 Q. Good afternoon, Mr. Fortney.

12 A. Good afternoon, Mr. Ireland.

13 Q. Nice to talk to you again. I have a few  
14 just sort of background questions. As I understand  
15 it, you were employed by the staff of the Public  
16 Utilities Commission from 1985 until 2012; is that  
17 right?

18 A. That's correct.

19 Q. And by whom are you employed now?

20 A. I'm employed by the Ohio Consumers'  
21 Counsel.

22 Q. And how long have you been employed by  
23 the OCC?

24 A. Since December of 2015.

25 Q. And as I understand it, you are not

1 offering any testimony in this case with respect to  
2 financial issues; is that right?

3 A. That's correct.

4 Q. So you've conducted no independent  
5 analysis of whether or not DP&L or DPL Inc. needs the  
6 DMR in this case; is that fair?

7 A. That's correct.

8 Q. Now, you would agree with me that  
9 electric utilities in Ohio should be financially  
10 strong, correct?

11 A. Yes, I think it's important to provide --  
12 in providing reliable service that they be  
13 financially strong.

14 Q. Now, I believe you've read Ms. Schroder's  
15 testimony in this case; is that right?

16 A. That's correct.

17 Q. And she states that DP&L has had among  
18 the lowest residential rates of electric utilities in  
19 this state, and if the amended stipulation is  
20 approved, DP&L's rates will still be among the lowest  
21 in the state. You are familiar with that testimony?

22 A. Yes.

23 Q. And you have no reason to disagree with  
24 her testimony based upon your experience with the  
25 Public Utilities Commission; is that right?

1           A.    Based upon other things that I have read  
2           and seen, I have no reason to believe that she is  
3           inaccurate.

4           Q.    Thank you.  Now, in this case you are  
5           offering testimony about elements two and three of  
6           the three-prong test to be applied by the Commission;  
7           is that right?

8           A.    That's correct.

9           Q.    And with respect to the first element,  
10          you have no reason to believe that the amended  
11          stipulation was not the result of serious bargaining  
12          among capable, knowledgeable parties; is that right?

13          A.    I have -- excuse me.  I have no reason to  
14          believe that it was not.  When I looked around at the  
15          parties who signed and talked, it was the usual  
16          suspects.

17                EXAMINER PRICE:  I assume you are  
18          referring to the attorneys as the usual suspects.

19          Q.    So your testimony focuses really on a  
20          very narrow issue, the allocation of the DMR costs;  
21          is that fair?

22          A.    That's exactly right.

23          Q.    And in allocating those costs, you would  
24          agree there are certain regulatory principles to be  
25          applied, right?

1           A.    Yes.  And the allocation of any costs  
2   there are principles that should be applied.

3           Q.    Right.  One of those principles would be  
4   cost causation; is that right?

5           A.    Correct.

6           Q.    Another one would be Commission  
7   precedent?

8           A.    Correct.

9           Q.    Another principle would be gradualism,  
10   not having sharp inclines or declines or changes in  
11   rates; is that right?

12          A.    Correct.

13          Q.    Fairness is also a regulatory principle  
14   to be considered; is that right?

15          A.    Correct.

16          Q.    And in applying those principles, it's  
17   important to look at individual rates as well as the  
18   rates as a whole; is that right?

19          A.    I think you would look at both.

20          Q.    And cost allocation is a matter of  
21   judgment, right?

22          A.    Certainly an element of judgment.  There  
23   are certain cases of allocation that are kind of  
24   universally accepted but a great number of  
25   allocations are certainly subject to the individual's

1 judgment.

2 Q. Right. At the end of the day cost  
3 allocation and rate design are largely a matter of  
4 judgment; is that right?

5 A. I was always told it was an art rather  
6 than a science.

7 Q. And certainly reasonable people could  
8 look at the same cost allegation and come to  
9 different judgments about it; isn't that right?

10 A. I believe that, sure.

11 Q. Oh, and we don't want to forget  
12 commonsense. That's a part of this exercise, is it  
13 not?

14 A. I think it's probably the most important  
15 part of this exercise.

16 Q. And your basic disagreement with  
17 Ms. Schroder is that you think the residential class  
18 bears a disproportionate share of the DMR; is that  
19 fair?

20 A. The only disagreement with Ms. Schroder  
21 in that she supports the stipulation and the  
22 stipulation has an allocation of the DMR that I  
23 disagree with.

24 Q. Right. And that's the focus of your  
25 testimony.

1           A.    Yes.

2           Q.    Although you would agree that many  
3 customers are going to actually be experiencing a  
4 rate decrease when they look at their bill; isn't  
5 that right?

6           A.    They will be experiencing a decrease but  
7 not as large of a decrease as they would have if my  
8 recommendation for the allocation of the DMR was  
9 accepted.

10          Q.    Now, referring to your testimony at page  
11 8, you make reference there to the NARUC Cost  
12 Allocation Manual. It's in line 15. Do you see  
13 that?

14          A.    Yes.

15          Q.    And you believe that is authoritative,  
16 don't you?

17          A.    I believe that is probably the most  
18 common resource for cost allocations.

19          Q.    And you go on to say in your testimony  
20 that "The NARUC manual does not address the  
21 allocation of costs associated with riders designed  
22 for credit support in order to maintain the financial  
23 integrity of electric companies or their parent or  
24 affiliates." Do you see that?

25          A.    Yes.

1           Q.    And you do not know whether debt costs  
2   are related to the volume of energy being delivered;  
3   is that right?

4           A.    I don't believe that I claim that debt  
5   cost is directly related to the volume of energy  
6   being received.

7           Q.    Right.  And the NARUC manual doesn't  
8   really provide you with any guidance on this  
9   question; is that fair?

10          A.    Not to my knowledge.

11          Q.    We talked about some of the regulatory  
12   principles but there are a number of other  
13   considerations to be taken into account when you  
14   allocate costs; is that right?

15          A.    For instance?

16          Q.    Energy?

17          A.    Well, there are a number of factors --

18          Q.    Right, a number of factors, okay.

19          A.    -- that you can allocate costs upon,  
20   energy, demand, revenue.

21          Q.    Distribution?

22          A.    Distribution revenue.

23          Q.    Current rates?

24          A.    Current rates, current riders, probably  
25   others but those pretty much cover.



1           Q.    And that all has to be taken into  
2   consideration when you are exercising your judgment;  
3   is that right?

4           A.    Sure.

5           Q.    Now, as I understand it, you're  
6   advocating cost allocation based solely on the  
7   Commission precedent from the FirstEnergy case; is  
8   that right?

9                   MR. GARVER:  Objection, misstates his  
10   testimony.

11                   EXAMINER WALSTRA:  Overruled.

12           A.    No.  That is one of the factors that I  
13   use but the other factors, that it's the proper  
14   allocation.

15           Q.    Would you agree with me that there are  
16   going to be situations where Commission precedent  
17   should not be followed, that it's going to depend on  
18   individual circumstances?

19           A.    I guess I need the question clarified.  
20   If the Commission has ordered something, that should  
21   be followed.

22           Q.    Oh.

23           A.    Is that what you are asking me?

24           Q.    No, no.  I think we can all agree the  
25   Commission orders should be followed.  But when you

1 are looking to Commission orders as a source of  
2 regulatory guidance for the purposes of cost  
3 allocation, would you agree with me that you may not  
4 always follow Commission precedent?

5 A. There will probably be a time where I  
6 will try to convince Examiner Price that his love of  
7 a straight fixed variable is misguided.

8 EXAMINER PRICE: And never convince me.

9 Q. So -- so I think you would agree with me  
10 that it's not an absolute that is to be followed in  
11 every instance.

12 A. I don't think that any Commission order  
13 is written in stone, and on occasion the Commission  
14 has changed its own orders. I think they are going  
15 through an issue right now with submetering where  
16 they have reversed in the past a couple times the  
17 Commission precedent, and they are still struggling  
18 with what to do with that issue.

19 Q. So there's going to be a number of  
20 different ways to do allocation and there's no  
21 universal opinion as to which one is correct; is that  
22 fair?

23 A. There may be no universal opinion but  
24 there may be opinions that are more correct than  
25 others.

1 MR. IRELAND: I'm sure that's true.

2 I don't have anything further, your

3 Honor.

4 EXAMINER WALSTRA: Thank you.

5 Ms. Bojko?

6 MS. BOJKO: No questions, your Honor.

7 EXAMINER WALSTRA: Go ahead.

8 MR. ALEXANDER: Yes, your Honor, just a  
9 couple.

10 - - -

11 CROSS-EXAMINATION

12 By Mr. Alexander:

13 Q. Mr. Fortney, turning in your testimony to  
14 page 10, starting on line 18, where you propose the  
15 Commission adopt Staff Witness Turkenton's rate  
16 design proposal from the FirstEnergy ESP proceeding.  
17 Do you see that?

18 A. Yes, I see that discussion.

19 Q. Okay. I would like to give just a little  
20 more background on that FirstEnergy proceeding. Now,  
21 the DMR in the FirstEnergy proceeding was actually  
22 proposed in the rehearing phase of that case; is that  
23 correct?

24 A. I believe that's correct, yes.

25 Q. And there was no stipulation between

1 staff and FirstEnergy regarding the DMR, correct?

2 A. I believe that's correct.

3 Q. And so in this case the rate design has  
4 been addressed in a stipulation, correct?

5 A. That's correct.

6 Q. Okay. And I believe you said earlier in  
7 response to questions from Mr. Ireland the rate  
8 design can be more art than science. Do you recall  
9 that conversation?

10 A. Yes.

11 Q. And you would agree that here the parties  
12 have agreed on the appropriate allocation expressed  
13 in the amended stipulation?

14 A. Parties that have signed the stipulation  
15 or agreed not to oppose have apparently found it to  
16 be reasonable.

17 Q. And staff is one of the parties that  
18 signed the amended stipulation?

19 A. That's correct.

20 MR. ALEXANDER: I don't have any further  
21 questions. Thank you, Mr. Fortney.

22 EXAMINER WALSTRA: Thank you.

23 Mr. Oliker?

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

25 MR. GLADMAN: Mr. Pritchard?

1                   MR. PRITCHARD: Yes. A few questions,  
2 your Honor.

3                   - - -

4                   CROSS-EXAMINATION

5 By Mr. Pritchard:

6           Q. Good afternoon, Mr. Fortney.

7           A. Good afternoon.

8           Q. Page 8 of your testimony, line 15, you  
9 reference the NARUC Cost Allocation Manual, correct?

10          A. Correct.

11          Q. And you would agree that this manual is a  
12 reliable source of information on cost of service  
13 questions, correct?

14          A. Yes.

15          Q. And cost of service analysis typically  
16 begins with a functional -- functionalization,  
17 correct?

18          A. Normally the first step in a cost of  
19 service study.

20          Q. And functions of an electric utility are  
21 generation, transmission, and distribution, correct?

22          A. Correct.

23          Q. And then the next step after the analysis  
24 is if you look at classification and assigned costs  
25 on energy demand or customer charge, correct?

1           A.    Correct.

2           Q.    You understand that under the amended  
3 stipulation DP&L has proposed to divest generation  
4 assets, correct?

5           A.    Certainly not my area of expertise nor a  
6 matter of my testimony but, yes, I understand that  
7 there were three plants that they have agreed to  
8 divest.

9           Q.    And you understand that for the SSO, DP&L  
10 will be securing generation service through an  
11 auction process, correct?

12          A.    I believe so, yes.

13          Q.    So the functions that DP&L will be  
14 providing are transmission service and distribution  
15 service, correct?

16                THE WITNESS:  I'm sorry.  Could I have  
17 the question reread?

18                EXAMINER WALSTRA:  Sure.  Please.

19                (Record read.)

20          A.    Yes.

21          Q.    Now, I have a few questions about the  
22 NARUC Cost Allocation Manual.

23                MR. PRITCHARD:  Your Honor, I would like  
24 to have marked as IEU-Ohio Exhibit 2.

25                EXAMINER WALSTRA:  So marked.

1 (EXHIBIT MARKED FOR IDENTIFICATION.)

2 Q. Mr. Fortney, do you have in front of you  
3 what has been marked as IEU-Ohio Exhibit 2, the  
4 binder?

5 A. This book?

6 Q. Yes.

7 A. Yes.

8 Q. Would you open the binder, take a look at  
9 the document in front of you. And is this the NARUC  
10 Cost Allocation Manual referenced in your testimony?

11 A. It appears to be, yes.

12 Q. Now, will you turn to page 13 of this  
13 manual and will you review the two paragraphs on the  
14 bottom of this page. I'm sorry, page 22, not page  
15 13, the paragraph at the bottom of page 22.

16 A. The one you have highlighted for me?

17 Q. I apologize that you did not receive a  
18 clean copy. It's correct that the manual states that  
19 "This manual only discusses the major costing  
20 methodologies" in that first sentence, correct?

21 A. Correct.

22 Q. And it continues -- it recognizes that  
23 "no single costing methodology will be superior to  
24 any other and the choice of methodology will depend  
25 on the unique circumstances of each utility,"

1 correct?

2 A. You read it correctly, yes.

3 Q. Now, in your testimony you did not  
4 include a bill impact analysis, correct?

5 A. That's correct.

6 Q. And you did not conduct a cost of service  
7 analysis, correct?

8 A. I did not perform a cost of service  
9 analysis, and I did give a bill impact for a 1,000  
10 kilowatt hour residential customer.

11 Q. And in considering rate design, you went  
12 through a couple of principles with -- in response to  
13 questions from Mr. Ireland, correct?

14 A. That's correct.

15 Q. And you would agree that one principle  
16 the Commission should consider when reviewing an  
17 issue of cost allocation is the intent of parties to  
18 a stipulation, correct?

19 A. I'm sorry?

20 MR. PRITCHARD: Could I have that  
21 question reread, your Honor?

22 EXAMINER WALSTRA: Sure.

23 (Record read.)

24 A. I think the intent of the parties to a  
25 stipulation would be one criteria to be reviewed,



1 certainly not the only criteria.

2 MR. PRITCHARD: I have no further  
3 questions, your Honor.

4 EXAMINER WALSTRA: Thank you.  
5 Staff?

6 MR. McNAMEE: No questions. Thank you.

7 EXAMINER WALSTRA: Do you have any  
8 questions?

9 Any redirect?

10 MR. GARVER: No redirect.

11 EXAMINER WALSTRA: All right. Thank you.

12 MR. GARVER: At this time OCC would move  
13 OCC Exhibit 14 be admitted into the record, your  
14 Honor.

15 EXAMINER WALSTRA: Any objections?  
16 Hearing none, it will be admitted.

17 (EXHIBIT ADMITTED INTO EVIDENCE.)

18 EXAMINER WALSTRA: Are you moving your  
19 exhibit?

20 MR. PRITCHARD: I am not unless it would  
21 be the Bench's preference.

22 EXAMINER WALSTRA: Okay. We will be  
23 adjourned until 9:00 a.m. tomorrow. Thank you.

24 We are off the record.

25 (Thereupon, at 2:26 p.m., the hearing was adjourned)

1  
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 Monday, April 10, 2017,  
7 and carefully compared with my original stenographic  
8 notes.

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11                   \_\_\_\_\_  
12                   Karen Sue Gibson, Registered  
13                   Merit Reporter.

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Summary: Transcript in the matter of The Dayton Power and Light Company hearing held on 04/10/17 - Volume IV electronically filed by Mr. Ken Spencer on behalf of Armstrong & Okey, Inc. and Gibson, Karen Sue Mrs.