

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 9:00 a.m. on Tuesday,
 April 11, 2017.

- - -

VOLUME V

- - -

ARMSTRONG & OKEY, INC.
 222 East Town Street, Second Floor
 Columbus, Ohio 43215-5201
 (614) 224-9481 - (800) 223-9481

- - -

1 APPEARANCES:

2 Faruki Ireland Cox Rinehart & Dusing P.L.L.
3 By Mr. Jeffrey S. Sharkey,
4 Mr. D. Jeffrey Ireland,
5 and Mr. Christopher C. Hollon
6 110 North Main Street, Suite 1600
7 Dayton, Ohio 45402

8 Dayton Power and Light Company
9 By Ms. Judi Sobecki,
10 General Counsel
11 and Mr. Michael Schuler,
12 Regulatory Counsel
13 1065 Woodman Drive
14 Dayton, Ohio 45432

15 On behalf of the Applicant.

16 Ohio Partners for Affordable Energy
17 By Ms. Colleen L. Mooney
18 P.O. Box 12451
19 Columbus, Ohio 43212

20 On behalf of the Ohio Partners for
21 Affordable Energy.

22 Sierra Club Environmental Law Program
23 Mr. Gregory E. Wannier,
24 Staff Attorney
25 2101 Webster Street, 14th Floor
Oakland, California 94612

On behalf of the Sierra Club.

Boehm, Kurtz & Lowry
By Mr. Michael L. Kurtz,
Mr. Kurt J. Boehm,
and Ms. Jody Kyler Cohn
36 East Seventh Street, Suite 1510
Cincinnati, Ohio 45202

On behalf of the Ohio Energy Group.

- - -

1 APPEARANCES: (Continued)

2 McNeese, Wallace & Nurick LLC
3 By Mr. Frank P. Darr
4 and Mr. Matthew Pritchard
5 21 East State Street, 17th Floor
6 Columbus, Ohio 43215

7 On behalf of the Industrial Energy Users
8 of Ohio.

9 IGS Energy
10 By Mr. Joseph Oliker
11 6100 Emerald Parkway
12 Dublin, Ohio 43016

13 On behalf of IGS Energy.

14 Vorys, Sater, Seymour & Pease, LLP
15 By Mr. Michael J. Settineri
16 and Ms. Gretchen L. Petrucci
17 52 East Gay Street
18 Columbus, Ohio 43215

19 On behalf of Retail Energy Supply
20 Association.

21 Kravitz, Brown & Dortch, LLC
22 By Mr. Michael D. Dortch
23 65 East State Street, Suite 200
24 Columbus, Ohio 43215

25 On behalf of Calpine Energy Solutions.

Carpenter Lipps & Leland LLP
By Ms. Kimberly W. Bojko
and Mr. James D. Perko
280 North High Street, Suite 1300
Columbus, Ohio 43215

On behalf of the Ohio Manufacturers'
Association Energy Group.

Carpenter Lipps & Leland LLP
By Ms. Angela M. Paul Whitfield
280 North High Street, Suite 1300
Columbus, Ohio 43215

On behalf of The Kroger Company.

1 APPEARANCES: (Continued)

2 Environmental Law & Policy Center
3 By Ms. Madeline Fleisher
4 21 West Broad Street, Suite 500
5 Columbus, Ohio 43215

6 On behalf of the Environmental Law &
7 Policy Center.

8 Spilman, Thomas & Battle, PLLC
9 By Ms. Carrie M. Harris
10 310 First Street, Suite 1100
11 P.O. Box 90
12 Roanoke, Virginia 24002

13 On behalf of Wal-Mart Stores East, LP,
14 and Sam's East, Inc.

15 Mr. Richard L. Sites
16 155 East Broad Street, Suite 301
17 Columbus, Ohio 43215

18 Bricker & Eckler, LLP
19 By Mr. Dylan Borchers
20 100 South Third Street
21 Columbus, Ohio 43215-4291

22 On behalf of the Ohio Hospital
23 Association.

24 Ohio Environmental Council
25 By Mr. Trent A. Dougherty
1145 Chesapeake Avenue, Suite I
Columbus, Ohio 43212

On behalf of the Ohio Environmental
Council.

Environmental Defense Fund
By Ms. Miranda Leppla
1145 Chesapeake Avenue, Suite I
Columbus, Ohio 43212

On behalf of the Environmental Defense
Fund.

- - -

1 APPEARANCES: (Continued)

2 Mike DeWine, Ohio Attorney General
3 By Mr. William Wright,
4 Section Chief
5 Mr. Thomas W. McNamee
6 and Mr. Thomas Lindgren,
7 Assistant Attorneys General
8 30 East Broad Street, 16th Floor
9 Columbus, Ohio 43215

10 On behalf of the Staff of the PUCO.

11 Bruce E. Weston, Ohio Consumers' Counsel
12 By Mr. William Michael,
13 Mr. Kevin F. Moore,
14 Mr. Ajay Kumar,
15 and Mr. Andrew S. Garver,
16 Assistant Consumers' Counsel
17 10 West Broad Street, Suite 1800
18 Columbus, Ohio 43215-3485

19 On behalf of the Residential Consumers of
20 The Dayton Power and Light Company.

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

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

Ohio Citizen Action
By Mr. Ellis Jacobs
130 West Second Street
Suite 700 East
Dayton, Ohio 45402

On behalf of Advocates for Basic Legal
Equality and the Edgemont Neighborhood
Coalition of Dayton.

- - -

1 APPEARANCES: (Continued)

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

6 On behalf of EnerNOC.

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

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

13 Calfee, Halter & Griswold LLP
14 By Mr. N. Trevor Alexander,
15 Mr. James F. Lang,
16 Mr. Steven D. Lesser,
17 and Mr. Mark T. Keaney
18 1200 Huntington Center
19 41 South High Street
20 Columbus, Ohio 43215

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

23 Isaac Wiles Burkholder & Teetor, LLC
24 By Mr. Mark Landes
25 and Mr. Brian Zets
Two Miranova Place, Suite 700
Columbus, Ohio 43215

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

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

On behalf of the Murray Energy
Corporation.

1 APPEARANCES: (Continued)

2 Adams County Prosecutor's Office
3 By Mr. C. David Kelley
4 110 West Main Street
5 West Union, Ohio 45693

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

10 PJM Interconnection
11 By Ms. Evelyn Robinson
12 2750 Monroe Boulevard
13 Audubon, Pennsylvania 19403

14 On behalf of the PJM Interconnection.

15 - - -
16
17
18
19
20
21
22
23
24
25

827

INDEX

- - -

WITNESSES

PAGE

David C. Parcell

Direct Examination by Mr. Kumar

830

Cross-Examination by Mr. Ireland

832

John Finnigan

Direct Examination by Ms. Leppla

853

Cross-Examination by Mr. Hollon

855

Patrick Donlon

Direct Examination by Mr. McNamee

859

Cross-Examination by Mr. Michael

862

- - -

OCC EXHIBITS

IDENTIFIED ADMITTED

15 Public Version Supplemental

Testimony of David C. Parcell

829

853

15A Confidential Version

Supplemental Testimony of

David C. Parcell (Confidential)

829

853

15B Direct Testimony of

David C. Parcell

829

853

- - -

EDF/OEC EXHIBIT

IDENTIFIED ADMITTED

1 Supplemental Direct

Testimony of John Finnigan

854

858

2 Direct Testimony of

John Finnigan

854

858

- - -

STAFF EXHIBITS

IDENTIFIED ADMITTED

2 Prefiled Testimony of

Patrick Donlon

859

909

- - -

1 Tuesday Morning Session,
2 April 11, 2017.

3 - - -

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

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

12 My name is Nicholas Walstra. With me is
13 Gregory Price. We are the attorney examiners signed
14 by the Commission for today's hearing. And we are in
15 the fifth, hopefully final, day.

16 We'll get started. OCC, call your
17 witness.

18 MR. KUMAR: Thank you, your Honor. We
19 would like to call Dave Parcell to the stand.

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

22 EXAMINER WALSTRA: Thank you. Please be
23 seated. For the record state your name and business
24 address.

25 THE WITNESS: My name is David C.

1 Parcell, P-A-R-C-E-L-L. My business address is
2 Technical Associates, Incorporated, 1503 Santa, like
3 Santa Claus, Santa Rosa Road, Richmond, Virginia
4 23229.

5 EXAMINER WALSTRA: Thank you. Go ahead.

6 MR. KUMAR: Thank you, your Honor. I
7 would like to mark Mr. Parcell's supplemental
8 testimony, the public version, as Exhibit 14.

9 EXAMINER WALSTRA: 15?

10 MR. KUMAR: The confidential version --

11 EXAMINER WALSTRA: What number did you
12 say? 14?

13 MR. KUMAR: 14 or 15?

14 EXAMINER WALSTRA: I think it's 15.

15 MR. KUMAR: Sorry, your Honor. Yeah,
16 that's correct, as Exhibit 15 is the supplemental
17 public direct; the confidential version of his -- his
18 supplemental testimony I would like to mark as 15A;
19 and his direct, his previously filed direct
20 testimony, I would like to mark as 15B.

21 EXAMINER WALSTRA: So marked.

22 (EXHIBITS MARKED FOR IDENTIFICATION.)

23 - - -

1 DAVID C. PARCELL

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

4 DIRECT EXAMINATION

5 By Mr. Kumar:

6 Q. Now, Mr. Parcell, are you the same David
7 Parcell whose direct and supplemental testimony was
8 filed in these cases?

9 A. Yes.

10 Q. And on whose behalf are you appearing
11 today?

12 A. The Office of Consumers' Counsel.

13 Q. And do you have your prepared testimony
14 with you on the stand?

15 A. I do.

16 Q. Did you -- did you prepare that testimony
17 or have it prepared at your direction?

18 A. I prepared it, yes.

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

21 A. I have a few very minor corrections I
22 would like to make. The first on page 5 --

23 MR. IRELAND: Which version?

24 THE WITNESS: 15A.

25 MR. IRELAND: Thank you.

1 MR. KUMAR: I believe these changes will
2 be for 15 as well.

3 A. Page 5, line 7, in front of the "4.4
4 percent" insert the word "be," B-E. I will give
5 Mr. Ireland credit because he asked me a question in
6 my deposition that made me realize I left the word
7 "be" out, so I will thank him for that.

8 So the next one is page 11, page 11, line
9 1, in the middle of that line is the word "nearly,"
10 N-E-A-R-L-Y. That should be "newly," N-E-W-L-Y.
11 Change "nearly" to "newly."

12 Page 13, this is not a correction; it's
13 an update. The little table between lines 18 and 19
14 contains six bond ratings. Under the column for DPL
15 in the row for S&P, the BB is now BB- so just put a
16 minus after the BB for DPL on the row S&P.

17 Page 14, on page 14, lines 14 through 18,
18 that is really part of the quotes. Somehow in the
19 last minute formatting they got stretched out to be
20 the full size but that's part of the quote that
21 continues on line 19.

22 And, finally, on page 16, line 21; page
23 16, line 21, the word "unfair" is there. Make that
24 "unfairly," U-N-F-A-I-R-L-Y.

25 And those are my corrections.

1 MR. KUMAR: Your Honor, the OCC would
2 move for the admission of OCC Exhibits 15, 15A, and
3 15B, and we would make the witness available for
4 cross-examination.

5 EXAMINER WALSTRA: Thank you.

6 Mr. Sharkey? Mr. Ireland?

7 MR. IRELAND: Thank you, your Honor.

8 - - -

9 CROSS-EXAMINATION

10 By Mr. Ireland:

11 Q. Good morning, Mr. Parcell.

12 A. Good morning, Mr. Ireland?

13 Q. It is Mr. Ireland. It's nice to meet you
14 face-to-face after --

15 A. Likewise.

16 Q. -- talking to you on the telephone.
17 Welcome to beautiful Columbus, Ohio.

18 A. Thank you. I went and bought an umbrella
19 this morning. I know what you mean.

20 Q. So I want to start by directing your
21 attention to I think it's page 4 of your March 29
22 testimony.

23 A. Page 4, you said?

24 Q. Yes.

25 A. Sure.

1 Q. And here you refer to the standards
2 typically followed by the PUCO in settlements. Do
3 you see that?

4 A. Yes.

5 Q. And you did not attend any of the
6 negotiating sessions; is that right?

7 A. That is correct.

8 Q. And as to the first prong, whether or not
9 the amended stipulation is a product of serious
10 bargaining among knowledgeable parties, you are not
11 in a position to challenge that prong; is that fair?

12 A. That is fair and that's correct.

13 Q. Now, as I understand it, sir, this is the
14 first time you have ever testified in Ohio in an ESP
15 case; is that right?

16 A. That is correct also.

17 Q. And other than this case, you have never
18 offered testimony in opposition to a stipulation; is
19 that right?

20 A. In Ohio. I have done so in other states
21 but not Ohio.

22 Q. In Ohio. And as I understand it, all of
23 your testimony in Ohio over the last 30 years has
24 been on behalf of the Office of Consumers' Counsel;
25 is that right?

1 A. I believe that's correct, yes.

2 Q. Okay. Now, as part of your testimony in
3 this case, you reviewed part of Mr. Malinak's
4 March 22, 2017, testimony; is that right?

5 A. That is correct.

6 Q. And Mr. Malinak's supplemental testimony
7 does not cite the cost of debt or rate of return; is
8 that fair?

9 A. He does cite the cost of equity but not
10 rate of return.

11 Q. Okay.

12 A. And I am not sure what your question was
13 referring to, so I will answer it that way.

14 Q. All right. That's fine. You have not
15 reviewed his deposition in this case; is that right?

16 A. That is correct, I have not.

17 Q. And I don't believe you were present for
18 his cross-examination; is that right?

19 A. That's also correct.

20 Q. Have you read a transcript of his
21 cross-examination?

22 A. No, I have not.

23 Q. And as I understand it, you did not
24 review any of his modeling; is that true?

25 A. That's correct. That was not the purpose

1 of my testimony, to review his modeling. I believe
2 Mr. Kahal did that, but I focused on the cost of
3 equity and debt and financial equity.

4 Q. So as I understand it, you looked at the
5 beginning of his testimony, but you didn't review the
6 section that had to do with -- the section of
7 Mr. Malinak's testimony that had to do with
8 methodology; is that fair?

9 A. I reviewed it, but I didn't study it
10 because I was not focused on that. That's beyond the
11 scope of my testimony.

12 Q. Right.

13 A. I did review; I did not focus on it.

14 Q. And you didn't focus on the section that
15 had to do with the input data for his financial
16 projections; is that right?

17 A. That is also correct, yes.

18 Q. And you didn't review -- didn't focus on
19 the section that had to do with DPL's and DP&L's
20 projected financial condition and integrity without
21 the DMR and the reconciliation rider; is that right?

22 A. Not the mechanics of it, no.

23 Q. And did you not focus on the section
24 referring to DPL's and DP&L's projected financial
25 conditions and integrity with the DMR and

1 reconciliation rider; is that right?

2 A. I'm sorry. I missed the word at the
3 beginning. Would you repeat that question? There is
4 one word I didn't understand.

5 Q. You did not focus on section F of his --
6 of his testimony, DPL's and DP&L's projected
7 financial condition and integrity with the DMR and
8 reconciliation rider.

9 A. Yes, that's correct. Section F is what I
10 didn't hear the first time; but, yes, I agree.

11 Q. Nor did you focus on the conclusions
12 regarding the most favorable in the aggregate test;
13 is that right?

14 A. That's correct. That was not the focus
15 of my testimony.

16 Q. And you didn't address the capital
17 structure in this ESP case, true?

18 A. I did cite the capital structure I
19 believe in the -- in OCC Exhibit 15B, not in 15A but
20 15B as part of my testimony. I guess the answer to
21 that is I did.

22 Q. Okay. Now, turning to Mr. Jackson, you
23 read his direct testimony, right?

24 A. Correct.

25 Q. And you did not review his deposition?

1 A. That is correct.

2 Q. And you weren't present for his
3 cross-examination either, were you?

4 A. That is correct, I was not.

5 Q. And I take it you have not read his --
6 the transcript of his cross-examination.

7 A. That is correct.

8 Q. And so you have not calculated what would
9 happen to DP&L's financials in the event that the DMR
10 in the amended stipulation is denied; is that true?

11 A. Well, I haven't done any calculations,
12 per se, in my testimony. What I have focused on
13 is -- I hope is clear is that what are the options of
14 AES to correct the problem DPL is in. And I don't
15 want to give you a long answer. That was the focus
16 of my testimony. I didn't do calculations, per se.

17 MR. IRELAND: Your Honor, I would move to
18 strike his answer.

19 MR. KUMAR: Your Honor, I think it's
20 responsive. He's been asking a series of questions
21 about what Mr. Parcell is testifying. I thin it is
22 appropriate for Mr. Parcell to sit and explain what
23 his testimony is about.

24 MR. IRELAND: He didn't answer the
25 question. He just gave a short speech about what he

1 did. The question was you did not make this
2 calculation. You did not calculate what would happen
3 to DP&L's financials in the event the DMR in the
4 amended stipulation is denied.

5 EXAMINER WALSTRA: I think he did answer,
6 so I am going to overrule.

7 Q. (By Mr. Ireland) And you have not done
8 any analysis of the financial metrics of what would
9 happen to DP&L in the event it does not receive the
10 \$105 million in the DMR; is that right?

11 A. The simple answer is yes, but I would
12 answer it in the context with my prior answer.

13 Q. Now, you say at page 8 of your testimony
14 that it is your understanding --

15 A. I am there. Page 8, you said?

16 Q. Right. It's your understanding that the
17 proposed settlement will result in a cost of debt of
18 5.29 percent and cost of equity of 10.5. Do you see
19 that?

20 A. I do.

21 Q. And that understanding is based upon the
22 sentence from the stipulation that you quote?

23 A. Correct.

24 Q. You, sir, have not made an analysis of
25 DP&L's ability to pay down its debt if the DMR is

1 rejected; is that right?

2 MR. KUMAR: Your Honor, I'm sorry. May I
3 have that question reread?

4 EXAMINER WALSTRA: Sure.

5 (Record read.)

6 A. I have not done an analysis. What I --
7 again, back to my prior answer, what I have suggested
8 is that there is a better option because this debt
9 was created for the purpose of purchasing DPL and
10 DP&L in 2011; and, now, ratepayers are being asked to
11 pay for it. That's what I am proposing.

12 MR. IRELAND: I move to strike everything
13 after the first sentence, your Honor.

14 MR. KUMAR: Your Honor, he asked him, if
15 I remember correctly, whether -- what analysis he
16 conducted. I'm sorry. What was the question again?

17 EXAMINER WALSTRA: I am going to grant
18 the motion.

19 MR. IRELAND: Thank you.

20 Q. (By Mr. Ireland) You are not in a
21 position to say whether or not DP&L's ability to
22 provide safe and reliable service may be affected by
23 the denial of the amended stipulation.

24 A. Not one way or the other, no.

25 Q. And you have not done any analysis of

1 what happens to DP&L's credit ratings in the absence
2 of a DMR; is that right?

3 A. Well, again, I have not done
4 calculations, but the context of my testimony tells
5 you what I have done. I don't want to give you a
6 speech because I told you what I did. I am trying to
7 be fair, in other words.

8 Q. Well, I appreciate that, and so am I.

9 A. I appreciate that too.

10 Q. But you have not done any analysis of
11 what happens to DP&L's credit ratings in the absence
12 of the DMR being approved by this Commission; is that
13 true?

14 A. That's true in the absence of AES
15 stepping up and itself paying for the money that it
16 forced DP&L to pay for the merger. That's my
17 testimony. I hope I'm not coming across the wrong
18 way and not being responsive to you but that's what
19 my testimony is.

20 MR. IRELAND: Your Honor, I would move to
21 strike everything after "that's true."

22 MR. KUMAR: I think -- your Honor, I
23 think that answer was very responsive to the question
24 that was asked.

25 EXAMINER WALSTRA: I will grant the

1 motion.

2 Q. (By Mr. Ireland) Mr. Parcell, you have
3 not done any analysis of the stipulation as more
4 favorable in the aggregate as compared to an MRO; is
5 that right?

6 MR. KUMAR: Your Honor, at this point I
7 am going to object. These are a series of questions
8 that we have gone far beyond the scope of
9 Mr. Parcell's testimony. Mr. Parcell has clarified
10 many times what the scope of his testimony is, so I
11 am going to object to this line of questioning.

12 EXAMINER WALSTRA: Mr. Ireland?

13 MR. IRELAND: Well, he is being offered
14 as a financial witness on behalf of the OCC. I
15 believe his resume says he's testified in over 545
16 cases. I think it's important to understand not only
17 what he did but what he didn't do in the context of
18 the evidence that the company is offering in support
19 of the stipulation.

20 MR. KUMAR: Your Honor, Mr. Ireland's
21 question was about the more favorable in the
22 aggregate versus MRO test. It's very clear that
23 Mr. Parcell is not here to talk about the ESP versus
24 MRO test. He is here to talk about the issues in his
25 testimony.

1 EXAMINER PRICE: Why can't he just answer
2 no? Then we can move on.

3 MR. KUMAR: Because, your Honor, we have
4 been going down this line of questioning the past 10
5 minutes. I felt it necessary to at some point raise
6 an objection.

7 EXAMINER WALSTRA: And it's overruled.

8 MR. KUMAR: Thank you, your Honor.

9 A. Is your pending question -- am I supposed
10 to answer?

11 MR. IRELAND: I believe the question has
12 been answered. Has it?

13 Q. Let me ask it again, you have not done
14 any analysis of the stipulation as more favorable in
15 the aggregate as compared to an MRO, right?

16 A. No, I did not do that.

17 Q. And you have not done any analysis of the
18 economic development rider that is contained in the
19 amended stipulation; is that right?

20 A. That's right. I specifically said in my
21 testimony that I do not address any other rider
22 except the DMR.

23 Q. And you have not done any analysis of an
24 FFO-to-debt ratio, correct?

25 A. That is correct.

1 Q. You would agree, would you not, that
2 customers of a utility benefit generally from a
3 financially healthy electric distribution company?

4 A. I would indeed, yes.

5 Q. And an electric distribution company with
6 financial integrity has investment grade securities;
7 is that true?

8 A. Yes.

9 Q. So if a utility with financial -- with
10 financial integrity is able to raise funds at a
11 reasonable cost, whether they be debt or equity, as
12 it needs to do so; is that right?

13 A. In general, yes. There are times when
14 that has not been true but in general, yes.

15 Q. And rating agencies couple DP&L and DPL
16 Inc., correct?

17 A. That is correct, as I state in my
18 testimony.

19 Q. So DPL Inc.'s financial condition affects
20 DP&L's financial integrity; is that right?

21 A. Yes. And as my testimony states, that's
22 the problem here.

23 Q. And an electric distribution utility that
24 has investment grade ratings tends to have a more
25 reasonable cost of debt; is that right?

1 A. A lower cost of debt, that is correct,
2 yes.

3 Q. And the DMR is going to be used to pay
4 down DP&L's debt, true?

5 A. Yes, sir. That's the purpose of the
6 DPR -- DMR.

7 Q. And it would be beneficial if DPL Inc.'s
8 debt was paid down; would you agree with that?

9 A. By some source, either AES or DPL.

10 Q. And that would also be beneficial to
11 DP&L, right?

12 A. Again, same answer, yes, from whatever
13 source.

14 Q. And I think according to the recent
15 update that you just made to your testimony, Standard
16 & Poor's has downgraded DPL Inc. and DP&L; is that
17 right?

18 A. This was in deposition. I don't want to
19 give a speech here. Standard & Poor's in March of
20 2017 downgraded the issuer of credit ratings --
21 issuer of credit of DPL and DP&L. Standard & Poor's
22 also downgraded the senior unsecured debt of DPL but
23 did not downgrade the senior unsecured debt of DP&L.

24 So the simple answer to your question was
25 the ratings for which DPL and DP&L were tied together

1 were downgraded. The ratings of DP&L to stand on its
2 own, which is the senior unsecured, were not
3 downgraded.

4 Q. Well, do you have up there in front of
5 you I think it's Company Exhibit 105? It should be
6 in a book.

7 A. RatingsDirect?

8 Q. Yes, yeah.

9 A. Yes, I have that.

10 Q. And right there across the top under
11 "Research Update," it says "DPL Inc. And DP&L
12 Downgraded To 'BB-' On Persistent Weak Financial
13 Measures And Coal Retirements; Outlook Negative."
14 Did I read that correctly?

15 A. You did, yes.

16 Q. All right. And if you go to the third
17 bullet down which says "We are lowering our rating on
18 DP&L's senior unsecured debt to 'B+' from 'BB' and
19 revising the recovery rating on this debt to '5' from
20 '4' based on deteriorating value of the merchant
21 power assets and the structural subordination of this
22 debt." That is a reduction to a non-investment
23 grade; is that true?

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

1 (Record read.)

2 MR. KUMAR: Your Honor, I believe the
3 question that was read said DP&L, whereas, I believe
4 the text says DPL. I just want to make sure we have
5 a clear record.

6 Q. Let me rephrase the question.

7 EXAMINER WALSTRA: Thank you.

8 Q. The third bullet point down, are you with
9 me, Mr. Parcell?

10 A. Yes.

11 Q. That reduction puts that debt at -- at a
12 non-investment grade; is that right?

13 A. I missed a word there. Before non, what
14 did you say?

15 Q. Debt.

16 A. You are not using the microphone. I
17 can't pick up everything you're saying.

18 Q. Okay. I'm sorry. I usually don't have a
19 problem being heard but.

20 EXAMINER PRICE: And the microphones
21 don't work.

22 THE WITNESS: Does not work?

23 EXAMINER PRICE: Give it a shot.

24 THE WITNESS: Why bother?

25 MR. MICHAEL: Even over your mumbling you

1 understood?

2 Q. Would you agree with me, Mr. Parcell,
3 going from B+ to BB is changing it from investment to
4 non-investment grade?

5 A. No, no. On bullet point 3, which you
6 read, that's DPL's senior unsecured debt. They went
7 from BB to B. Neither of those are investment grade.
8 BB is not investment grade. BBB is investment grade.
9 So DPL was not investment grade before, but the
10 following bullet point showed DP&L's rating was
11 affirmed, not downgraded, and it's BBB which is
12 investment grade.

13 Q. That's the lowest investment grade, true?

14 A. Yes, but it's investment grade. But they
15 were not downgraded, only the senior unsecured, only
16 DPL Inc.

17 Q. You would agree that this downgrading as
18 reflected in Company Exhibit 105 is not good news for
19 DP&L, true?

20 A. DP&L?

21 Q. DP&L.

22 A. It's -- it's true because DP&L is largely
23 responsible for paying the debt cost of DPL. That's
24 the reason it's true.

25 MR. IRELAND: Move to strike everything

1 after "It's true," your Honor.

2 MR. KUMAR: Your Honor, the answer was
3 clearly responsive to Mr. Ireland's question.

4 EXAMINER WALSTRA: Denied.

5 Q. (By Mr. Ireland) It's your understanding,
6 Mr. Parcell, is it not, that AES has not received any
7 dividends from DP&L since 2011?

8 A. I believe it's 2012.

9 Q. All right. Since 2012. And any
10 dividends paid from -- or that would have been paid
11 from DP&L -- excuse me. Any dividends paid from DP&L
12 to DPL Inc. have been used to pay interest on the
13 debt; is that your understanding?

14 A. Right. Again, the debt that was incurred
15 due to the financial merger, yes.

16 Q. So the provisions of this stipulation
17 that DP&L will not pay debts to AES provides some
18 protection to DP&L's customers, right?

19 A. Well, I address that in my testimony.
20 Can I refer you to that or is that improper?

21 MR. KUMAR: No. That's appropriate.

22 Q. Let's answer the question.

23 MR. KUMAR: Your Honor, he is.

24 EXAMINER PRICE: Can I have the question
25 back, please.

1 (Record read.)

2 A. And what I said in my testimony, which is
3 a direct response to your question, is that DP&L has
4 been paying dividends, over \$800 million since the
5 merger to DPL, which largely goes to pay for the debt
6 that was used to finance the merger which means
7 ratepayers are being asked to pay for the
8 acquisition.

9 EXAMINER PRICE: Does that mean "no"?

10 THE WITNESS: In that context it does,
11 yes.

12 Q. (By Mr. Ireland) So is it your testimony,
13 sir, that the provision that DP&L will not be paying
14 any -- or that DPL will not be paying any dividends
15 to AES provides no protection to DP&L's customers?

16 A. Well, it's no change because they are
17 not -- DPL hasn't paid dividends to AES since 2012,
18 so it's not a change. It's more of a guarantee now,
19 but it's not a change. And you are still paying
20 dividends from DP&L customers to DPL to pay incurring
21 costs of the debt.

22 Q. You also refer to tax payments in your
23 testimony.

24 A. Yes.

25 Q. I believe on page 23.

1 A. That is correct.

2 Q. And to the extent the taxes are not being
3 paid to AES but instead are being used to pay down
4 debt, that benefits DP&L's customers, true?

5 A. If they -- if you assume they would pay
6 them in the absence of this agreement, it's true.
7 But it's not clear they have been paying them all
8 along so that's a conditional true.

9 Q. Now, you -- you would agree that any
10 calculation of return on equity is an estimate,
11 right?

12 A. Yes.

13 Q. There's no direct final uncontroversial
14 technique for measuring a return on equity; is that
15 true?

16 A. That is correct.

17 Q. And the cost of debt is not stated in the
18 stipulation; is that right?

19 A. That is correct.

20 Q. Nor is cost of equity defined in the
21 stipulation?

22 A. Mr. Malinak refers to a 10.5 percent
23 return on equity which I interpret to be defined. I
24 don't mean to be splitting hairs with you, but he
25 does refer to a 10.5, so I think he defined that,

1 yes. So the answer is no.

2 Q. Is it defined in the stipulation?

3 A. No. It's in his testimony. It is not
4 defined to my knowledge in the stipulation, that's
5 correct.

6 Q. And if the amended stipulation is
7 approved, there is no rate of return that DP&L is
8 expected to earn as a result of the stipulation; is
9 that fair?

10 A. I can't answer that question directly.
11 May I tell you why?

12 Q. No.

13 A. Then I won't.

14 Q. You disagree with the cost of capital and
15 return on equity that Dr. Moron used in the rate
16 case, right?

17 A. Right. In 2015, that's correct.

18 Q. And you would agree that your differences
19 with Dr. Moron's numbers are ones of a professional
20 disagreement, right?

21 A. In timing. His analysis was two years
22 old, and mine are more current. It's timing and
23 differences in methodologies.

24 MR. IRELAND: Just a second. I may be
25 finished, your Honor.

1 I have nothing further, your Honor.

2 EXAMINER WALSTRA: Thank you.

3 MR. IRELAND: Thank you, Mr. Parcell.

4 THE WITNESS: Thank you.

5 EXAMINER WALSTRA: Go around the room.

6 Ms. Bojko?

7 MS. BOJKO: No. Thank you, your Honor.

8 EXAMINER WALSTRA: Mr. Alexander?

9 MR. ALEXANDER: No. Thank you.

10 EXAMINER WALSTRA: Mr. Olikar?

11 MR. OLIKER: No. Thank you, your Honor.

12 EXAMINER WALSTRA: Anyone else?

13 Any redirect?

14 Staff?

15 MR. McNAMEE: No. Thank you.

16 MR. KUMAR: May I have a few minutes,
17 your Honor?

18 EXAMINER WALSTRA: Yeah. We'll go off
19 the record for 5 minutes.

20 (Discussion off the record.)

21 EXAMINER WALSTRA: We'll go back on the
22 record.

23 MR. KUMAR: I have no questions on
24 redirect, your Honor.

25 EXAMINER WALSTRA: Thank you,

1 Mr. Parcell.

2 Would you like to move your exhibits?

3 Mr. Kumar?

4 MR. KUMAR: I'm sorry. We would like to
5 move for the admission of Exhibits 15, 15A, and 15B.

6 EXAMINER WALSTRA: Any objections?

7 Hearing none, they will be admitted.

8 (EXHIBITS ADMITTED INTO EVIDENCE.)

9 EXAMINER WALSTRA: Please call your next
10 witness -- your first witness.

11 MS. LEPLA: Call John Finnigan.

12 (Witness sworn.)

13 EXAMINER WALSTRA: Thank you. Please
14 state your name and business address for the record.

15 THE WITNESS: John Finnigan, 128 Winding
16 Brook Lane, Terrace Park, Ohio 45174.

17 EXAMINER WALSTRA: Thank you.

18 - - -

19 JOHN FINNIGAN

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

22 DIRECT EXAMINATION

23 By Ms. Leppla:

24 Q. Mr. Finnigan, can you state where you
25 work and what capacity.

1 A. I work at Environmental Defense Fund as
2 an attorney. My title is lead counsel.

3 MS. LEPPLA: At this time we would like
4 to mark Mr. Finnigan's supplemental direct testimony
5 as EDF/OEC Exhibit 1 and his direct testimony as
6 EDF/OEC Exhibit 2.

7 (EXHIBITS MARKED FOR IDENTIFICATION.)

8 Q. Mr. Finnigan, do you have copies of your
9 supplemental and direct testimony in front of you?

10 A. Yes.

11 Q. Do you have any changes or corrections to
12 your supplemental or direct testimony?

13 A. No.

14 Q. If I ask you the questions that appear in
15 EDF/OEC Exhibits 1 and 2, would your answer be the
16 same as indicated in those documents?

17 A. Yes.

18 Q. Was this testimony prepared by you or
19 under your supervision?

20 A. Yes.

21 Q. Is the information contained in those
22 exhibits true and accurate to the best of your
23 knowledge?

24 A. Yes.

25 MS. LEPPLA: At this time we would like

1 to move for the admission of EDF/OEC Exhibits 1 and
2 2, and Mr. Finnigan is available for cross.

3 EXAMINER WALSTRA: Thank you.

4 Mr. Hollon.

5 - - -

6 CROSS-EXAMINATION

7 By Mr. Hollon:

8 Q. Good morning, Mr. Finnigan. I am Chris
9 Hollon. I represent DP&L. Nice to meet you in
10 person.

11 A. Nice to meet you.

12 Q. You've reviewed the amended stipulation
13 filed in this proceeding, correct?

14 A. Yes.

15 Q. And you've reviewed the October 2016
16 testimony of Craig Jackson?

17 A. Yes.

18 Q. In your original testimony and in your
19 supplemental testimony you do not address whether the
20 financial integrity of DP&L or DPL Inc. is at risk,
21 correct?

22 A. Well, only to the extent of this item
23 that I mention in my supplemental direct testimony
24 and that is just to note that the revenues that are
25 collected through the amended stipulation are much

1 lower than what was proposed in the original
2 application. The original application proposed
3 145 million over seven years, and Mr. Jackson said
4 that that was necessary to protect the company's
5 financial integrity and what is being collected as a
6 result of the amended stipulation is much lower than
7 that.

8 Q. Okay. And you agree that it's important
9 that Dayton Power and Light be able to provide safe
10 and stable service to customers, correct?

11 A. Yes.

12 Q. And you agree that DP&L cannot provide
13 safe and stable service if it does not have
14 sufficient funds to do so, correct?

15 A. Yes.

16 Q. In either your original testimony or your
17 supplemental testimony you do not specifically
18 address whether DP&L can maintain its financial
19 integrity without the DMR, correct?

20 A. Yes.

21 Q. And you agree that grid modernization
22 would benefit DP&L's customers?

23 A. Yes.

24 Q. And you agree that grid modernization
25 would enhance the competitive market, correct?

1 A. Yes.

2 Q. Do you agree that grid modernization is
3 expensive?

4 A. Yes.

5 Q. And do you agree that DP&L needs to be
6 financially stable to pursue grid modernization?

7 A. Yes.

8 Q. And neither your direct testimony or your
9 supplemental testimony specifically addressed whether
10 DP&L will pursue grid modernization without the DMR,
11 correct?

12 A. Yes.

13 Q. And you agree if the DMR is approved,
14 then the amount that is recovered under it would not
15 be dependent on wholesale price, correct?

16 A. Yes.

17 Q. And you agree that all of the debt at
18 DP&L supports all of the operations of the company,
19 correct?

20 A. Yes.

21 Q. Including its distribution operation,
22 correct?

23 A. Yes.

24 MR. HOLLON: Your Honor, I have no more
25 questions.

1 EXAMINER WALSTRA: Thank you.

2 Questions over here?

3 MR. ALEXANDER: No. Thank you, your
4 Honor.

5 EXAMINER WALSTRA: Any other questions?

6 MR. OLIKER: No. Thank you.

7 EXAMINER WALSTRA: Staff?

8 MR. McNAMEE: Nothing.

9 EXAMINER WALSTRA: Any redirect?

10 MS. LEPPLA: No redirect.

11 EXAMINER WALSTRA: Thank you. Would you
12 like to move your exhibits?

13 MS. LEPPLA: Yes. Exhibits 1 and 2,
14 please.

15 EXAMINER WALSTRA: Any objections?

16 Hearing none, they will be admitted.

17 (EXHIBITS ADMITTED INTO EVIDENCE.)

18 EXAMINER WALSTRA: And the court reporter
19 will need a copy of both.

20 MS. LEPPLA: I think they are actually up
21 on the stand.

22 EXAMINER WALSTRA: Mr. McNamee, you may
23 call your last witness.

24 MR. McNAMEE: I will. Thank you, your
25 Honor. At this time staff would call Patrick Donlon.

1 (Witness sworn.)

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

4 THE WITNESS: It's Patrick Donlon, 180
5 East Broad, Columbus, Ohio.

6 - - -

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

10 DIRECT EXAMINATION

11 By Mr. McNamee:

12 Q. Mr. Donlon, by whom are you employed and
13 in what capacity?

14 A. Public Utilities Commission of Ohio as
15 the director of rates and analysis.

16 MR. McNAMEE: Okay. At this time, your
17 Honor, staff would ask to have marked for
18 identification as Staff Exhibit 2 a document filed in
19 this case denominated prepared testimony of Patrick
20 Donlon.

21 EXAMINER PRICE: It will be so marked.

22 (EXHIBIT MARKED FOR IDENTIFICATION.)

23 Q. Mr. Donlon, do you have before you what's
24 been marked for identification as Staff Exhibit 2?

25 A. I do.

1 Q. What is it?

2 A. It is my prefiled testimony.

3 Q. Was it prepared by you or under your
4 direction?

5 A. It was.

6 Q. Do you have any corrections to make to
7 that document here this morning?

8 A. I do. I have three.

9 Q. Could you read them to us very slowly,
10 please.

11 A. Yes. The first one is on page 4, line
12 71. The last word in that sentence which is "both"
13 should be "all."

14 Q. Okay.

15 A. On page 5, line 109, twice in that
16 sentence it says "qualitative" and both of those
17 should be "quantitative." So the very first word in
18 the sentence -- or in the line quantitative -- it
19 says "qualitative." It should be "quantitative
20 benefits" and then "the additional" instead of
21 "qualitative" it should be "quantitative." And those
22 are all the changes.

23 Q. All right. Excuse me. With those
24 corrections that you just noted, are the contents of
25 what's been marked for identification as Staff

1 Exhibit 2 true to the best of your knowledge and
2 belief?

3 A. Yes, they are.

4 Q. Excuse me. Do you adopt the contents of
5 what's been marked for identification as Staff
6 Exhibit 2 as your direct testimony in this case?

7 A. Yes.

8 MR. McNAMEE: Okay. The witness is
9 available for cross.

10 EXAMINER PRICE: Thank you. The
11 stipulation proponents.

12 Mr. Alexander?

13 MR. ALEXANDER: No questions.

14 EXAMINER PRICE: Kroger?

15 MS. WHITFIELD: No.

16 EXAMINER PRICE: OMAEG?

17 MS. BOJKO: No. Thank you.

18 EXAMINER PRICE: Mr. Olikier?

19 MR. OLIKER: No. Thank you.

20 EXAMINER PRICE: Mr. Settineri?

21 MR. SETTINERI: No. Thank you, your
22 Honor.

23 EXAMINER PRICE: Mr. Pritchard?

24 MR. PRITCHARD: No. Thank you.

25 EXAMINER PRICE: Mr. Boehm?

1 MR. BOEHM: No. Thank you, your Honor.

2 EXAMINER PRICE: Consumers' Counsel?

3 MR. MICHAEL: We've obviously moved on to
4 opponents of the amended stipulation, correct?

5 EXAMINER PRICE: I thought that was
6 implied.

7 MR. MICHAEL: I don't like to leave
8 anything for implication.

9 - - -

10 CROSS-EXAMINATION

11 By Mr. Michael:

12 Q. Good morning, Mr. Donlon.

13 A. Good morning. How are you?

14 Q. I'm well, thank you. You were here for
15 the testimony by the Company Witness Jackson,
16 correct?

17 A. I have been in and out, so I was here for
18 at least partial of it.

19 Q. Okay. For that portion of Witness
20 Jackson's testimony you heard, there's nothing with
21 which you disagree, correct?

22 A. Well, seeing as I wasn't here for all of
23 it, I hesitate to say yes to all of that because I'm
24 not sure what exactly -- what portions you are
25 referring to, so I think it's a pretty open-ended

1 question.

2 Q. Well, if you would like to listen to my
3 question, Mr. Donlon. I asked you for the portion
4 you were here, you didn't hear anything with which
5 you disagreed, correct?

6 MR. McNAMEE: I object.

7 EXAMINER PRICE: Argumentative?

8 MR. McNAMEE: Yes, indeed.

9 EXAMINER PRICE: Sustained. Let's not be
10 argumentative for our last witness. Go ahead and ask
11 your question.

12 MR. MICHAEL: I apologize. The witness
13 was a little argumentative with me so.

14 EXAMINER PRICE: I don't think so. Let's
15 rephrase the question.

16 MR. MICHAEL: Certainly. May I actually
17 have the actual question read back, your Honor,
18 please?

19 EXAMINER PRICE: You may.

20 MR. MICHAEL: Thank you.

21 (Record read.)

22 A. Not that I recall.

23 Q. Okay. And you were here for a portion of
24 Company Witness Schroder's testimony as well,
25 correct?

1 A. I think hers was a very small portion,
2 but yes.

3 Q. Okay. And for that portion of Company
4 Witness Schroder's testimony that you heard, there is
5 nothing with which you disagree, correct?

6 A. Not that I recall.

7 Q. Okay. And you were here for Company
8 Witness Malinak's testimony, correct?

9 A. Portions of it.

10 Q. Okay. And for those portions of the
11 testimony that you heard, Mr. Donlon, there is
12 nothing with which you disagree, correct?

13 A. Not that I can recall.

14 Q. If you would please turn, Mr. Donlon, to
15 page 3, line 52, of your testimony.

16 A. I'm there.

17 Q. And in that sentence, Mr. Donlon, you
18 reference a "diverse group of interests," correct?

19 A. Correct.

20 Q. And staff agrees, Mr. Donlon, that when
21 evaluating a stipulation, one of the things that the
22 Commission should consider is the extent to which
23 there is a diverse group of interest that supports
24 the stipulation, correct?

25 A. It's not specifically one of the three

1 prongs, but I think it is relevant.

2 Q. And just a point of clarification,
3 Mr. Donlon, when you say "I think it is relevant,"
4 you're testifying not in your personal capacity but
5 on behalf of staff right now, correct?

6 A. Correct.

7 Q. I wanted to talk to you, Mr. Donlon,
8 about the first prong of the three-prong test
9 regarding serious bargaining, if I might, okay?

10 A. That's fine.

11 Q. And you are aware that the stipulation we
12 are here talking about is denominated an amended
13 stipulation, correct?

14 A. That is correct.

15 Q. And the reason why it is an amended
16 stipulation is because there had been a previous
17 stipulation filed in this docket, correct?

18 A. Correct.

19 Q. Okay. And, Mr. Donlon, you're familiar
20 with the notion that the Commission has made very
21 clear that no single party should have undue
22 influence or a veto, if you will, over a stipulation,
23 correct?

24 A. That has -- I have read the orders that
25 have stated that no parties have a veto,

1 specifically -- well, I will just leave it at that.

2 Q. Okay. And by no parties, staff would
3 agree that staff is included in that no parties,
4 correct?

5 A. I would agree with that.

6 Q. Okay. Mr. Donlon, you read Company
7 Witness Schroder's testimony as to why there is an
8 amended stipulation, correct?

9 A. Actually did I read it? I glanced at it.
10 I didn't read it extensively.

11 Q. Okay. Staff was not on the stipulation,
12 correct?

13 A. Are you talking about the first
14 stipulation?

15 Q. Yes, I am.

16 A. Yes, we were not.

17 Q. And staff is on the amended stipulation.

18 A. That is correct.

19 Q. Okay. And do you recall, Mr. Donlon,
20 based on your I believe you described it as review of
21 Witness Schroder's testimony as to why we are at an
22 amended stipulation, that one of the things that
23 Witness Schroder mentioned as to why we are at an
24 amended stipulation is because the company continued
25 to work with the parties; and, now, the company has

1 staff on the amended stipulation and a broader scope
2 of parties than was on the first stipulation?

3 A. I would have to look at her's to remember
4 exactly what she said.

5 MR. MICHAEL: Okay. May I approach for
6 purposes of refreshing?

7 EXAMINER PRICE: You may.

8 MR. MICHAEL: Let me find it real quick,
9 your Honor. Give me a moment.

10 EXAMINER PRICE: Let's go off the record.
11 (Discussion off the record.)

12 EXAMINER PRICE: Go back on the record.
13 Mr. Hollon has while we were off the
14 record given Mr. Donlon a copy of Ms. Schroder's
15 testimony.

16 Q. (By Mr. Michael) Mr. Donlon, if I might
17 refer you, please, to page 4 of Witness Schroder's
18 testimony and specifically lines 9 through 17. When
19 you have had an opportunity to read that, Mr. Donlon,
20 please let me know.

21 A. I have read it.

22 Q. Okay. And, Mr. Donlon, does that having
23 had the opportunity to read that portion of Witness
24 Schroder's testimony, does that refresh your
25 recollection as to at least the company's advantage

1 point as to why we now have an amended stipulation?

2 MR. McNAMEE: Objection, relevance.

3 The -- I don't know why we are discussing a
4 stipulation that's not been presented to the
5 Commission that this witness -- that the staff did
6 not sign. This witness is testifying on behalf of
7 the staff. He is being cross-examined by the OCC
8 that didn't sign either stipulation. It doesn't seem
9 to have any bearing on anything.

10 EXAMINER PRICE: I think that Mr. Michael
11 is trying to prove the continuing good faith
12 negotiations by the very capable and knowledgeable
13 parties throughout the proceeding.

14 MR. McNAMEE: And I would thank him for
15 that.

16 MR. MICHAEL: Does that mean you are
17 going to withdraw your objection?

18 EXAMINER PRICE: We will give Mr. Michael
19 more leeway to pursue this point.

20 MR. MICHAEL: Thank you, your Honor.

21 THE WITNESS: Can we have the question
22 reread, repeated, please?

23 (Record read.)

24 A. Well -- yes.

25 Q. Okay. And, Mr. Donlon, the question I

1 have for you as it relates to the serious bargaining
2 prong is does the evolution of how we got to the
3 amended stipulation raise questions with staff as to
4 the uncertainty that parties may feel were they to
5 sign a stipulation that staff is not on given the
6 precedent in this case that a utility making an
7 application will continue the negotiation process and
8 make changes in order to get staff onboard the
9 stipulation?

10 MR. McNAMEE: Objection.

11 MR. ALEXANDER: Can I have the question
12 read?

13 EXAMINER PRICE: Let's have the question
14 back and then we will hear Mr. McNamee.

15 MR. SHARKEY: I have objections too, your
16 Honor.

17 EXAMINER PRICE: And Mr. Sharkey.

18 (Record read.)

19 EXAMINER PRICE: Mr. McNamee.

20 MR. McNAMEE: The -- I guess the simplest
21 way to explain the objection is it calls for
22 speculation. Although the witness has many skills,
23 he is not clairvoyant. He is not able to read other
24 parties' minds and what their motivations might be.

25 EXAMINER PRICE: Mr. Sharkey.

1 MR. SHARKEY: I join that objection. I
2 would also add the question is vague. It is not even
3 really clear what it is that Mr. Donlon is being
4 asked and it's compound and there's various items in
5 the question that he is being asked about.

6 EXAMINER PRICE: Mr. Alexander?

7 MR. ALEXANDER: I join both of those, and
8 in addition, it assumes facts not in evidence such
9 that there is, in fact, uncertainty among other
10 parties and ask the witness to speculate as to what
11 other potential signatory parties besides staff may
12 be thinking.

13 MS. BOJKO: Your Honor, I join all three
14 and add, up the ante, that it's confidential
15 settlement discussions that can't be disclosed.

16 EXAMINER PRICE: I am going to sustain
17 the objection on all four grounds.

18 MR. MICHAEL: Would you like to hear my
19 response first, your Honor?

20 EXAMINER PRICE: You know, it is so
21 overwhelmingly clear the objection should be
22 sustained it would just not be good use of our time.

23 MR. MICHAEL: How can you reach that
24 conclusion until you hear the responses to it?

25 EXAMINER PRICE: It is obviously

1 speculation. It clearly is asking him to read
2 into -- read into what other parties' minds are. It
3 establishes -- Mr. Alexander is correct, it assumes a
4 fact not in evidence that there is such an
5 uncertainty. And I agree with Ms. Bojko because it
6 is in the confidential settlement negotiations.

7 MR. MICHAEL: If your Honor would indulge
8 me to respond --

9 EXAMINER PRICE: Sure.

10 MR. MICHAEL: -- to each of those very
11 quickly, I would very much appreciate it. Thank you
12 very much.

13 As it relates to Mr. McNamee's
14 objections, this is a matter of policy. Mr. Donlon
15 is obviously a senior member of PUCO's staff as
16 director of rates and analysis department. And I
17 clearly asked Mr. Donlon if staff had considered the
18 degree to which there would be uncertainty created.

19 As it relates to the objection
20 Mr. Sharkey added, which I believe was compound, the
21 compound question, as your Honor well knows,
22 involves, you know, an and, an or, and something to
23 that effect where you are asking two questions in
24 one. Mine was clearly a single answer and not two
25 questions in one.

1 As to Mr. Alexander's objection, again, I
2 asked a senior official on the PUCO staff if staff
3 had considered what could be a very important policy
4 consideration, and I think that Mr. Donlon in his
5 capacity as director of rates and analysis department
6 is very well positioned to consider -- to answer the
7 question as to whether or not staff considered it.

8 And, lastly, I am not even sure the
9 confidentiality objection makes any sense because I
10 wasn't asking the nature of the negotiations. I was
11 asking about whether or not staff had considered
12 something.

13 So thank you for the time, your Honor. I
14 appreciate it. Does that change your mind?

15 EXAMINER PRICE: Not at all. Objection
16 is sustained on all four grounds.

17 MR. MICHAEL: Thank you, your Honor.

18 Q. (By Mr. Michael) Mr. Donlon, isn't it
19 true that the PUCO has never approved a pilot program
20 of a duration of six years?

21 A. I couldn't speak to never in their
22 history.

23 Q. Okay. Are you aware of the PUCO ever
24 approving a pilot program that is proposed to last
25 six years in duration?

1 A. I think in FirstEnergy's ESP the
2 transmission pilot is actually eight years. So not
3 exactly six but I think it actually goes the full
4 term of the ESP which would be eight.

5 EXAMINER PRICE: Do you recall,
6 Mr. Donlon, in AEP's last distribution rate case
7 there was a pilot proposed by Consumers' Counsel for
8 a decoupling rider and the duration of that? Could
9 it have been at least six years or longer?

10 THE WITNESS: Unfortunately I wasn't here
11 during that, and I'm not aware of that.

12 EXAMINER PRICE: Okay. Thank you.

13 MR. MICHAEL: Thank you, your Honor.

14 Q. (By Mr. Michael) Mr. Donlon, other than
15 the one you just referenced that you think might be
16 eight years, can you think of any others?

17 A. Off the top of my head, I'm not
18 100 percent sure, but I think there might be. I am
19 sure there's been some, but I really don't know.

20 Q. Okay. Now, do you recall, Mr. Donlon, if
21 the transmission pilot you referenced had a
22 requirement that the utility file some sort of report
23 with the Commission to enable staff to evaluate the
24 pilot program being proposed?

25 A. I would have to go back and check the

1 exact specifics of that.

2 Q. Mr. Donlon, isn't it correct as a general
3 proposition the Commission requires that a utility
4 file a report regarding a pilot program to enable
5 staff to evaluate the extent to which the pilot
6 program is doing what it's purported to do?

7 THE WITNESS: Could you please reread
8 that.

9 (Record read.)

10 MR. PRITCHARD: Objection, your Honor.
11 It calls for speculation as to facts that are not in
12 evidence. He asked him to agree with a general
13 policy, and we haven't established whether there is
14 or is not any general policy.

15 EXAMINER PRICE: Try it in a different
16 way, do you think it would be sound regulatory
17 practice for the Commission to require some sort of a
18 periodic report for a pilot program being approved by
19 the Commission?

20 THE WITNESS: I think in certain
21 circumstances that it is good to have a report or
22 some sort of evaluation. A report may not be the
23 best -- in all cases the best way to do that. But
24 you should evaluate if you are going to do a pilot
25 program, yes.

1 EXAMINER PRICE: Thank you.

2 Q. (By Mr. Michael) And, Mr. Donlon, how
3 long after the beginning of a pilot program does
4 staff believe it would be good to conduct that
5 evaluation that you just referenced?

6 A. Well, all of that is dependent on the
7 specific pilot program. I mean, at this point it
8 sounds like we are talking about a generic pilot.
9 So, you know, one, I think you should be doing it and
10 looking at it throughout the course. And then
11 depending on how much information there is, how long
12 the pilot is, that's going to depend on how long it
13 takes you to actually do that final evaluation based
14 on the information that's there.

15 Q. Isn't it true, Mr. Donlon, that it would
16 be sound regulatory policy for the evaluation to
17 occur no more than two years into the pilot program?

18 A. Not necessarily.

19 Q. If you would turn to your testimony,
20 Mr. Donlon, on page 4 and specifically line 79
21 through 89. And let me know when you are there,
22 please.

23 A. I'm there.

24 Q. Okay. And it's correct, Mr. Donlon, that
25 the primary purpose of the DMR is to pay off debt,

1 correct?

2 A. I think it is -- that's only a portion of
3 it. It's -- it's not necessarily the primary. I
4 think the primary is actually to allow the company to
5 be able to invest in the distribution grid. The --
6 to get to that point, they have to pay down debt, so
7 they can actually incur -- be able to go out and get
8 new debt, get debt at a reasonable rate without
9 massive covenants, but the primary goal is to invest
10 in the grid.

11 Q. Mr. Donlon, do you have a copy of the
12 amended stipulation with you?

13 A. I do.

14 Q. And, Mr. Donlon, if you would, please,
15 turn to page 5 of the amended stipulation and
16 specifically paragraph b.

17 A. I'm there.

18 Q. Okay. And just please take a moment to
19 read it real quick, if you would, Mr. Donlon. I am
20 going to ask you some questions about it.

21 A. I'm good.

22 Q. Okay. And in that paragraph it describes
23 how the cash flow from the DMR will be used, correct?

24 A. Correct.

25 Q. Okay. And the first item describing how

1 the cash flow will be used is to pay interest
2 obligations on existing debt at DPL Inc. and DP&L,
3 correct?

4 A. Correct.

5 Q. And the second item describing how cash
6 flow from DMR will be used is to make discretionary
7 debt prepayments at DPL Inc. and DP&L, correct?

8 A. Correct.

9 Q. And then, lastly, the last item as to
10 what cash flowing from the DMR will be used for is to
11 "position" DP&L to make capital expenditures to
12 modernize and/or maintain DP&L's transmission and
13 distribution infrastructure, correct?

14 A. Correct.

15 Q. So none of the money from DMR is going to
16 go directly to distribution investments, correct?

17 MR. McNAMEE: Can we have the question
18 reread, please?

19 EXAMINER PRICE: You may.

20 (Record read.)

21 A. I would disagree with that statement.

22 Q. Okay. Please point, if you would,
23 Mr. Donlon, to language in paragraph 5b that serves
24 as the basis for your disagreement, if you will.

25 A. So with -- to be able to invest in the

1 grid with the covenants that the company currently
2 has on their debt, they have to pay down debt to be
3 able to invest in the grid. So, you know, it is --
4 by paying down debt, it directly enables them to be
5 able to invest in the grid.

6 Q. Okay.

7 EXAMINER PRICE: Let me ask a question.
8 If the company used the DMR funds to invest in the
9 grid directly, cash from the DMR to invest in the
10 grid directly, would that be an allowable usage under
11 c?

12 THE WITNESS: Yes.

13 Q. (By Mr. Michael) To follow up on Attorney
14 Examiner Price's question, if I might, Mr. Donlon,
15 although it may be an allowable usage under c, it's
16 not a required usage under c, correct?

17 THE WITNESS: Can you reread that,
18 please?

19 (Record read.)

20 A. I would say by the reading of paragraph b
21 the requirement would be to use it in a, b, or c.

22 Q. Correct. But what I am focusing on,
23 Mr. Donlon, is the first word in paragraph -- in item
24 c, if you will, which is to "position" DP&L. That
25 word does not require DP&L to make any investments

1 with the cash it receives under DMR, correct?

2 MR. McNAMEE: Objection, asked and
3 answered. He said what these three things are. It's
4 allowed to invest in any of the three. He has
5 already given his answer.

6 MR. MICHAEL: And I understand
7 Mr. McNamee's objection, your Honor. However, the
8 question I asked is a little bit different than the
9 question Mr. McNamee objected to. Your Honor pointed
10 out that paragraph c may very well allow the
11 investment, and the question I am now asking is
12 whether or not paragraph c requires the use of DMR
13 funds to invest in distribution modernization.

14 EXAMINER PRICE: I think he answered that
15 question. I think he said it's a, b, or c.
16 Sustained.

17 MR. McNAMEE: Exactly my point.

18 Q. (By Mr. Michael) Okay. So just so the
19 record is clear then, Mr. Donlon, it is staff's
20 position that cash flow from the DMR can be directly
21 used to make direct distribution investments; is that
22 accurate?

23 A. Yes.

24 Q. And is it staff's position that the
25 amended stipulation requires cash flow from the DMR

1 to be invested in distribution investments?

2 MR. McNAMEE: Objection. Again, asked
3 and answered. He said the money can be used for all
4 three of these things.

5 EXAMINER PRICE: Sustained.

6 Q. (By Mr. Michael) Mr. Donlon, the amended
7 stipulation doesn't include a modernization plan,
8 correct?

9 A. It includes a proposal that the company
10 will file a plan but that plan will be done after the
11 PowerForward Initiative or by February 1 of 2018.

12 MR. MICHAEL: Move to strike.
13 Nonresponsive, your Honor.

14 MR. McNAMEE: I think it's perfectly
15 responsive.

16 EXAMINER PRICE: You have to explain why
17 it's not responsive.

18 MR. MICHAEL: I asked him a "yes" or "no"
19 question, and I said the amended stipulation doesn't
20 include a distribution -- or, pardon me, a
21 modernization plan. The answer is either, "yes, it
22 does" or, "no, it doesn't" and that wasn't part of
23 his answer.

24 MR. McNAMEE: Well, actually the answer
25 isn't "yes" or "no." The answer is as he presented

1 it. It is more complicated than just "yes" or "no."

2 EXAMINER PRICE: I don't think that was
3 strictly a "yes" or "no" question. Overruled -- or
4 denied. Sorry. You can ask him a "yes" or "no"
5 follow-up though, if you want. He can answer "yes"
6 or "no" this time.

7 Q. (By Mr. Michael) Mr. Donlon, did staff
8 analyze what DP&L's borrowing rates would be if the
9 DMR were not approved?

10 MR. McNAMEE: Could I have that question
11 reread, please?

12 EXAMINER PRICE: You may.

13 (Record read.)

14 A. Are you talking specifically like
15 interest rates?

16 Q. Yes.

17 A. Really with what the covenant that the
18 company already has, the availability, they can't get
19 any loans with this. So, yes, I would say we did.

20 Q. And did staff analyze, Mr. Donlon, what
21 rates DPL Inc. could borrow at in the absence of the
22 DMR?

23 A. I would say it's the same answer as the
24 previous.

25 Q. Mr. Donlon, did you read OCC Witness

1 Kahal's testimony?

2 A. I did not.

3 Q. As the director of the rates and analysis
4 department on staff, you are familiar with the
5 concept of ring fencing, correct?

6 A. I am.

7 Q. And staff in response to DP&L's amended
8 application did not consider ring fencing as part of
9 the solution to the problem that now brings us here,
10 correct?

11 A. That would not -- staff does not think
12 that's actually a viable option in this case.

13 Q. Okay. Tell me why.

14 MR. SHARKEY: I am going to object, your
15 Honor. Ring fencing is a vague term that could mean
16 different things to different people. Without any
17 specificity as to what Mr. Michael means about ring
18 fencing, I think the question is vague.

19 EXAMINER PRICE: Well, I think Mr. Donlon
20 understood the question. You know, it might be --
21 let's just hear his answer to this question. There
22 might be some talking past each other but we will
23 clarify that if we need to.

24 THE WITNESS: The question at hand is
25 "Tell me why," correct?

1 MR. MICHAEL: Correct.

2 MR. McNAMEE: Perhaps we can have the
3 question reread to be precise.

4 EXAMINER PRICE: It will be "Tell me
5 why."

6 MR. McNAMEE: I want to hear that again.

7 EXAMINER PRICE: Let's have the question
8 back.

9 MR. MICHAEL: It was a complicated one.

10 (Record read.)

11 A. So the stipulation actually in staff's
12 opinion covers a lot of ring fencing issues, so --
13 and I forget exactly what page it is. Let's see, I
14 think it's the -- okay. So page 3 of the stipulation
15 first says that the company DPL Inc. agrees not to
16 pay dividends to AES Corp. So that in a sense is
17 actually a ring fencing from DPL Inc. which the
18 Commission actually through this stipulation we were
19 able to negotiate which is something that is outside
20 of the Commission's actual authority to be able to do
21 in an order without the company in a stipulation.

22 There's a form of ring fencing that staff
23 and all the parties were able to negotiate into the
24 stipulation. Again, in -- with really even the tax
25 sharing liabilities and the ability for the company

1 to -- or AES to forgive those and infuse equity is a
2 type of ring fencing in staff's opinion which, again,
3 only through the stipulation would we be able to --
4 would the Commission be able to have the authority
5 over that.

6 Q. Mr. Donlon, are you aware if any member
7 of staff read Mr. Kahal's testimony regarding ring
8 fencing?

9 A. I can't speak to what any one of my --
10 the 300 employees within the PUCO did or didn't do.

11 Q. So you don't know what people within your
12 department are doing?

13 MR. McNAMEE: Objection.

14 EXAMINER PRICE: Grounds?

15 MR. McNAMEE: Argumentative.

16 EXAMINER PRICE: Very much so.

17 Sustained.

18 MR. MICHAEL: Thank you, your Honor.

19 Q. (By Mr. Michael) Now, Mr. Donlon, I just
20 want to understand your testimony, if I could. In
21 response to my initial question about ring fencing, I
22 believe you mentioned that staff did not feel that
23 was an appropriate solution to the problem, but then
24 when I asked you to tell me why, you referred to ring
25 fencing that was in the stipulation. So my question

1 is does staff not think that ring fencing is an
2 appropriate solution, or does it think only that the
3 ring fencing that the company has asked for and
4 that's reflected in the amended stipulation is an
5 appropriate solution?

6 A. Well, I think the comment that the
7 company asked for the ring fencing is very misleading
8 and probably incorrect. It was a negotiated term and
9 we -- staff did not feel ring fencing between DP&L
10 and DPL Inc. was appropriate. However, the ring
11 fencing that we did -- that was negotiated through
12 the stipulation between AES and DPL Inc. was
13 appropriate and was only available through a
14 stipulation.

15 Q. And I want to, if I could, Mr. Donlon,
16 follow up a little bit regarding your references to
17 page 3, paragraph 1 under Roman Numeral II. If I am
18 not mistaken, you referred to items a and b as items
19 that staff had successfully negotiated into the
20 stipulation; is that accurate as to what staff was
21 able to do?

22 MR. McNAMEE: Objection.

23 EXAMINER PRICE: Grounds?

24 MR. McNAMEE: It goes to settlement
25 discussions and that would be confidential. It asks

1 what positions people took in the settlement
2 discussions themselves and that is out of bounds.

3 EXAMINER PRICE: Mr. Michael?

4 MR. MICHAEL: I was following up on
5 something Mr. Donlon himself testified to. If
6 Mr. McNamee would prefer, I would be happy to ask the
7 court reporter to go back in his testimony to find
8 that quote from Mr. Donlon, but I wanted to follow
9 up.

10 EXAMINER PRICE: Even if Mr. Donlon spoke
11 loosely, clearly the provisions in a and b are the
12 result of the stipulation negotiation process and
13 that's really pretty much all we need to know. So I
14 will sustain the objection.

15 MR. MICHAEL: Thank you, your Honor.

16 Q. (By Mr. Michael) Mr. Donlon, did -- does
17 staff feel that it is in a position to negotiate
18 concessions from AES?

19 THE WITNESS: Can you reread that?

20 MR. McNAMEE: I think I'll object.

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

23 MR. MICHAEL: Statute of limitations,
24 your Honor.

25 EXAMINER PRICE: Let's have the question

1 back, please.

2 (Record read.)

3 EXAMINER PRICE: Grounds, Mr. McNamee?

4 MR. McNAMEE: Again, AES is not a party
5 to this case. I don't know even in what context you
6 would negotiate with someone who is not a party in
7 this case that would have relevance for this case.

8 EXAMINER PRICE: I think Mr. Donlon
9 opened the door to -- a little bit on this line with
10 his answer to the question a couple questions ago.

11 So go ahead and answer if you can.

12 A. So within this case, I think there are
13 certain items that through DPL Inc., DP&L, and their
14 executives that were at the negotiating table that
15 are senior members of AES Corporation so they agreed
16 to that -- these terms. So I would say that -- it's
17 an odd way of saying it. Through DPL Inc. they
18 agreed to do things for AES, so I guess yes.

19 Q. Thank you, Mr. Donlon. Mr. Donlon, if
20 you would please turn to page 5 of your testimony,
21 lines 99 through 101, and let me know when you have
22 had an opportunity to get there.

23 A. I'm there.

24 Q. Okay. When reaching your conclusion,
25 Mr. Donlon -- excuse me, I apologize -- that's

1 reflected in your answer on page 99 through 101, did
2 staff consider the cost of the SmartGrid rider?

3 A. The SmartGrid rider is a zero-based
4 rider.

5 Q. Okay. So because it's a zero-based
6 rider, staff obviously didn't know what the cost of
7 the SmartGrid rider will turn out to be ultimately,
8 correct?

9 A. At this point it's zero. So in -- as
10 well as in a hypothetical, it would -- I think we --
11 staff's belief is that it would fall under the ESP or
12 MRO.

13 Q. Okay.

14 EXAMINER PRICE: Are you saying you think
15 staff believes that there could be a SmartGrid rider
16 irrespective of whether it was an ESP or MRO?

17 THE WITNESS: Yes.

18 EXAMINER PRICE: So it will be a wash.

19 THE WITNESS: Yes.

20 EXAMINER PRICE: Thank you.

21 Q. (By Mr. Michael) And, Mr. Donlon, staff
22 in reaching that conclusion again in -- on lines 99
23 through 101, staff did not consider the cost of these
24 storm cost riders, correct?

25 A. Again, staff believes it could be an

1 either ESP or MRO, so it would be a wash.

2 Q. Okay. Just in the interest of time,
3 Mr. Donlon, I am going to ask you about a couple more
4 riders the same question, and you tell me if your
5 answer is different. The decoupling rider?

6 A. It's the same answer.

7 Q. Okay. The DIR?

8 A. Same answer.

9 Q. The reconciliation rider?

10 A. Same answer.

11 Q. Economic development rider?

12 A. Same answer.

13 Q. And the TCRR-N?

14 A. Same answer.

15 Q. Okay. Thank you, Mr. Donlon. If I could
16 draw your attention, Mr. Donlon, to page 5, lines 111
17 through 113, please.

18 A. I'm there.

19 Q. Okay. Could you please tell me,
20 Mr. Donlon, what incentive or incentives promote
21 competition?

22 A. I want to make sure I hit them all, so I
23 am going to look.

24 Q. Take your time.

25 MR. McNAMEE: Your Honor, if the witness

1 needs time to review his testimony, perhaps we should
2 take a break, give him the time. Do you need the
3 time?

4 THE WITNESS: No. I quickly wanted to
5 scan over the stipulation so that I am sure
6 I don't --

7 EXAMINER PRICE: The break is over.

8 THE WITNESS: -- miss any.

9 A. So one portion of this which actually I
10 don't -- which is not in the 9 million would be the
11 consolidated billing portion and the portion that
12 competitive CRES providers are actually paying so.

13 EXAMINER PRICE: Mr. Donlon, are you
14 saying the \$150,000 shareholder contribution by the
15 company towards billing changes is an incentive that
16 promotes competition?

17 THE WITNESS: Yes. But to my belief, I
18 don't think that was actually in the calculation for
19 the 9 million.

20 MR. MICHAEL: If it makes it easier, your
21 Honor, I am focused on just the calculation of the 9
22 million, if that makes it easier for Mr. Donlon.

23 A. Also the City of Dayton payments, that
24 energy efficiency, while they are focused on energy
25 efficiency they also have a result on competition.

1 So a lot of these -- some of these that go into the 9
2 million, they are going to hit more than just one
3 item. So the energy efficiency to Dayton will go
4 towards competition as well as energy efficiency. I
5 would say, you know, the payments, the Honda items go
6 towards competition, I think the OHA portion, and,
7 again, pretty much the PWC as well with the energy
8 efficiency. That has an effect on competition as
9 well. That looks to be all of -- all of them.

10 Q. Okay. And I have to ask you these
11 questions, Mr. Donlon. I don't mean to be tedious,
12 and I apologize if it is, but they are simply not
13 defined in your testimony, so I need to understand
14 the specifics of it, so as it relates to the
15 reliability and what you are referring to and please
16 limit your answer to the \$9 million that you
17 reference in your testimony.

18 A. Again, anything that's energy efficiency
19 is going to have an effect on reliability. So that's
20 all of the ones that I just mentioned with energy
21 efficiency are going to have that. The Hos -- or the
22 airport funds and battery backup is absolutely going
23 to have reliability of the airport for that. Ohio
24 Hospital Association's have -- have a reliability
25 component of it. That was the end of my answer.

1 Q. Okay. And same question regarding the
2 economic development, Mr. Donlon?

3 A. I would say every single one of them --

4 Q. Okay.

5 A. -- were economic development.

6 Q. And what's the last one? Oh, energy
7 efficiency, same thing?

8 A. Yes.

9 (CONFIDENTIAL PORTION EXCERPTED.)

10
11
12
13
14
15
16
17
18
19
20
21
22
23 (OPEN RECORD.)

24 MR. ALEXANDER: Your Honor, I believe we
25 may need to mark that portion of the transcript as

1 confidential.

2 MR. SHARKEY: I was just checking with my
3 client on the same item.

4 EXAMINER PRICE: Yes. Let's put the
5 entire question and answer in the confidential
6 portion of our transcript.

7 THE WITNESS: Sorry.

8 Q. (By Mr. Michael) Now, Mr. Donlon, in the
9 next sentence, what we were just referring to so it
10 would be the bottom of page 5 and the top of page 6,
11 you state that "These incentives are entirely funded
12 by shareholders and should be considered quantitative
13 benefits when evaluating the ESP versus MRO test,"
14 correct?

15 A. That is what it says.

16 Q. And my question is how important was it
17 to staff in the evaluation of the MRO versus ESP test
18 that the provisions that you and I just discussed are
19 "funded by shareholders"?

20 A. From a quantitative analysis, staff took
21 what was in the stipulation and took that, so each
22 payment, did it by the three years of the DMR to
23 calculate that.

24 Q. And I am just trying to understand that
25 sentence I drew your attention to, Mr. Donlon. I

1 mean, if those provisions that we discussed were not
2 funded by shareholders, would that have changed that
3 portion of staff's analysis of the ESP versus MRO
4 test?

5 A. You would still have a quantitative
6 benefit, but it wouldn't be \$9 million.

7 Q. How much would it be?

8 A. I would have to go and look at it. And
9 that's very -- that takes a lot of assumptions in
10 because some of these stipulations are that the first
11 year will be funded by shareholders, and then they
12 will be -- what's the exact language -- proposed for
13 recovery through a different rider. So you would
14 have to go and make assumptions on each one of those
15 individual riders if it got approved, if it didn't.

16 So we went forward with the assumption
17 that none of them got approved in a different rider.
18 But you still would have a quantitative benefit based
19 on the first year of funding of shareholders either
20 way, but it would be less, and then you would have to
21 pick and choose which ones aren't, so you wouldn't
22 know that right now.

23 Q. Okay. And the -- but the MRO versus ESP
24 test requires consideration of the duration of the
25 proposed ESP and not just the first year, correct?

1 A. Right. But either way it would still
2 pass quantitatively because of the first year
3 payments from shareholders.

4 EXAMINER PRICE: So what you are saying
5 is there is a range of potential benefits. The max
6 is 9. There's some lower number which if we added
7 them up in the stipulation, we would know what the
8 lower number is.

9 THE WITNESS: Yes. Actually I think
10 Witness Malinak projected that all of them would be
11 over five years of the -- that the DMR got extended
12 over five, and I think his was roughly around \$11
13 million where ours was 9, and you could have a
14 smaller number, but all three numbers still
15 quantitatively pass and are above the MRO.

16 Q. (By Mr. Michael) Mr. Donlon, could I draw
17 your attention to page 6, lines 119 through 122, of
18 your testimony.

19 A. Yes.

20 Q. When you suggest that the DMR may be
21 potentially recoverable through an MRO application,
22 do you see that portion of your testimony?

23 A. Yes.

24 Q. And you cite to a provision of the
25 Revised Code there in RC 4928.142(D)(4). Do you see

1 that?

2 A. Yes. I was waiting for the question.

3 Q. And what -- what exactly -- what
4 provision do you think in the MRO statute potentially
5 authorizes the DMR? What does it say?

6 A. There was two questions in there. What
7 statute which would be 4928.142(D)(4).

8 Q. Uh-huh.

9 A. Right?

10 Q. Right. What does it say?

11 EXAMINER PRICE: Do you have a copy of
12 that statute with you?

13 THE WITNESS: Yes, I do.

14 Q. Let me get mine out real quick,
15 Mr. Donlon, if I could.

16 Okay.

17 A. Are we asking to read the whole (D)(4)
18 paragraph into the record?

19 Q. I want you to point to me in (D)(4) where
20 it says that a DMR may potentially be available under
21 an MRO.

22 A. And that would be -- and I don't have
23 line items on mine but let's see. I will read the
24 whole sentence here. "Additionally, the Commission
25 may adjust the electric distribution utility's most

1 recent Standard Service Offer price by such just and
2 reasonable amount that the Commission determines
3 necessary to address any emergency that threatens the
4 utility's financial integrity." And then it goes on.

5 Q. Okay. And, Mr. Donlon, it's true that in
6 the state of Ohio we haven't yet had a utility file
7 for an MRO, correct?

8 A. Actually that is not true.

9 Q. Okay. When did a utility file for an
10 MRO?

11 A. I do not have the exact years, but I know
12 that they have.

13 Q. Okay. And was that application
14 withdrawn, and then the utility filed for an ESP,
15 correct?

16 A. I believe it was withdrawn, but the
17 specifics about if it was withdrawn or changed or
18 amended I'll leave to the record.

19 Q. Okay. And it's true, Mr. Donlon, that an
20 application for an MRO has never been heard in its
21 entirety before the Commission, correct?

22 A. I believe that to be the case.

23 EXAMINER PRICE: You are assuming a fact
24 not in evidence, very much not in evidence.

25 MR. MICHAEL: Which fact is that, your

1 Honor?

2 EXAMINER PRICE: We are going to strike
3 that last question and answer.

4 MR. MICHAEL: Which factor is that, your
5 Honor?

6 EXAMINER PRICE: The MRO has never been
7 fully heard by this Commission. You are assuming a
8 fact not in evidence.

9 MR. MICHAEL: I was just simply asking
10 the director of rates and analysis department if that
11 were true. I am not assuming anything.

12 EXAMINER PRICE: Why don't you ask him
13 more directly and say isn't it true that. Why don't
14 you ask him if he is aware of.

15 MR. MICHAEL: Okay.

16 Q. (By Mr. Michael) Mr. Donlon, are you
17 aware as to whether or not an MRO application has
18 gone through a complete adjudication before the PUCO?

19 MR. OLIKER: Objection.

20 EXAMINER PRICE: Grounds?

21 MR. OLIKER: Calls for a legal
22 conclusion.

23 EXAMINER PRICE: Sustained. Even I am
24 not sure what "complete adjudication" means.

25 MR. MICHAEL: Adjudication to its

1 finality.

2 Q. (By Mr. Michael) Mr. Donlon, are you
3 aware of whether or not an MRO has ever gone through
4 an entire hearing process to conclusion after which
5 the PUCO has rendered an opinion on that application?

6 A. I am not -- I am not aware of one.

7 Q. And, Mr. Donlon, are you aware as to
8 whether or not the Ohio Supreme Court has ever issued
9 an opinion interpreting the MRO statute?

10 A. I am not aware of one.

11 Q. And, Mr. Donlon, I trust then that that
12 is why you qualify your answer on page 6, lines 117
13 through 122, as to whether or not the DMR would be
14 possible under an MRO test with the word
15 "potentially," correct?

16 A. Well, when you are comparing the MRO to
17 the ESP, one of the two, either side you are on --
18 well, actually you wouldn't do an MRO to an ESP so
19 that doesn't -- sorry.

20 The MRO would be hypothetical because
21 there isn't one in front of us, so it would always be
22 hypothetical when you are comparing it, its
23 potential.

24 Q. So staff can't say with certainty, in
25 other words, that the DMR would be available under

1 the MRO statute, correct?

2 A. Staff believes that through, you know, RC
3 4928.142(D)(4) that we believe it would be eligible.

4 Q. Okay. So just so I am clear, Mr. Donlon,
5 are we -- should we revise your written testimony
6 then? Because your written testimony says
7 "potentially" and if I am understanding you
8 correctly, you are now saying that staff believes it
9 would be available under an MRO.

10 MR. McNAMEE: Objection.

11 EXAMINER PRICE: Grounds?

12 MR. McNAMEE: That's not what he said.

13 EXAMINER PRICE: Sustained.

14 Q. Mr. Donlon, does staff believe that the
15 DMR is available under the MRO statute?

16 A. Again, through a hypothetical,
17 theoretical, yes, it's potentially available through
18 that.

19 Q. Mr. Donlon, is -- if the Commission were
20 to deny -- or modify the stipulation, I should say,
21 such that Dayton Power and Light could not get the
22 DMR, would the MRO versus ESP test be failed?

23 MR. McNAMEE: Could I have the question
24 reread, please?

25 EXAMINER PRICE: You may.

1 (Record read.)

2 MR. ALEXANDER: I am going to object,
3 your Honor.

4 EXAMINER PRICE: Grounds?

5 MR. ALEXANDER: The question is vague.
6 It does not identify whether he is asking about the
7 quantitative test or the qualitative in the aggregate
8 test addressed in the statute.

9 EXAMINER PRICE: There is only one test.
10 It's well established there is only one test. There
11 are three aspects of the test, right? I understand
12 what you are saying.

13 MR. ALEXANDER: Thank you.

14 EXAMINER PRICE: I am not going to let it
15 stand there is three tests. There is only one test.
16 If you could be more specific.

17 Q. (By Mr. Michael) I am not quite sure how
18 much more specific I can be. You are familiar with
19 the MRO versus ESP test, correct?

20 A. Correct.

21 Q. Okay. And my question is if the amended
22 stipulation were to be modified such that the DMR
23 rider was no longer a part of it, would the ESP
24 versus MRO test be failed, which is to say the ESP
25 would no longer be more favorable in the aggregate

1 than the expected results under the MRO?

2 MR. ALEXANDER: Now, I am going to
3 object. I think the question has now been changed.
4 I think counsel might have misspoken there. You
5 might want to rephrase that question.

6 MR. MICHAEL: Can we have it read back,
7 your Honor?

8 EXAMINER PRICE: Let's have the question
9 back again.

10 (Record read.)

11 EXAMINER PRICE: You can answer.

12 A. Since the belief is that a DMR could
13 potentially be recovered through an MRO or an ESP, if
14 it exists or doesn't exist, it's a wash.

15 Q. Okay. Mr. Donlon, do you know --

16 EXAMINER PRICE: I would like to follow
17 up on that question real fast.

18 MR. MICHAEL: Certainly, your Honor.

19 EXAMINER PRICE: If there were no -- how
20 can I say this? You do believe that the DMR has
21 qualitative benefits in terms of grid modernization,
22 do you not?

23 THE WITNESS: Qualitative?

24 EXAMINER PRICE: Qualitative.

25 THE WITNESS: Yes.

1 EXAMINER PRICE: In terms of the position
2 of the company to modernize the grid.

3 THE WITNESS: Yes. So from -- I was
4 speaking from a quantitative.

5 EXAMINER PRICE: But just based on
6 overall looking at the qualitative and quantitative
7 sides, do you believe that if the Commission modified
8 the DMR, that the ESP -- to eliminate it, the ESP
9 would still pass the MRO -- ESP-MRO test?

10 THE WITNESS: Staff believes if the
11 Commission eliminates the DMR, that the company will
12 reject the ESP so there will not be an ESP would be
13 the way I would put my money on. But I think there
14 is a lot of items in the stipulation. Yes, yes, I
15 do.

16 EXAMINER PRICE: Thank you.

17 Q. (By Mr. Michael) Mr. Donlon, you are
18 familiar that Dayton Power and Light had a rider
19 called the service stability rider, correct?

20 A. Yes.

21 Q. And do you know during the duration of
22 the service stability rider how much consumers were
23 charged under that rider?

24 A. I get the two riders -- the acronyms
25 confused. Are we talking about the rider in ESP II

1 that doesn't now exist or the rider in ESP I?

2 Q. The rider in ESP II.

3 A. That was roughly 101, I believe.

4 Q. A year?

5 A. I think so.

6 EXAMINER PRICE: 110.

7 THE WITNESS: 110.

8 EXAMINER PRICE: 110. It's a matter of
9 record, it's 110.

10 MR. MICHAEL: Matter of record. Good.

11 Q. And let's go back to the rider in ESP I.
12 It sounds like that's easier for you to refer to them
13 rather than by an acronym. Do you know, Mr. Donlon,
14 how much Dayton Power and Light charged consumers
15 under that rider?

16 A. I believe that rider was 73 million.

17 Q. And before staff signed on to the amended
18 stipulation that would authorize Dayton Power and
19 Light to charge consumers an additional \$105 million
20 a year, did staff inquire of the company what it had
21 done with the roughly \$110 million a year they had
22 already collected under the service stability rider
23 (ESP II rider)?

24 MR. McNAMEE: Objection.

25 EXAMINER PRICE: Grounds?

1 MR. McNAMEE: Relevance. I don't see
2 how -- however the company chose to spend money in
3 the past in this regard makes any difference in this
4 case today.

5 MR. SHARKEY: I am also going to object,
6 your Honor. It inquires into settlement
7 communications between the parties. He asked whether
8 they inquired what they did in the course of the
9 negotiations.

10 EXAMINER PRICE: Mr. Michael?

11 MR. MICHAEL: Well, I would say, your
12 Honor, that as Witness Jackson testified, you don't
13 soundly manage yourself into a financial crisis. The
14 question I have and why it's relevant is before we
15 authorize Dayton Power and Light to charge consumers
16 an additional \$105 million a year, it might be useful
17 for the Commission to know what happened to the
18 \$110 million a year that Dayton Power and Light
19 charged under the SSR on the theory that past
20 behavior is forecast of future results.

21 EXAMINER PRICE: But you are not asking
22 for something that happened in settlement
23 negotiations?

24 MR. MICHAEL: I am not, your Honor.

25 EXAMINER PRICE: You are asking whether

1 the staff had issued a data request to the staff?

2 MR. MICHAEL: Did staff consider it, yes,
3 basically.

4 EXAMINER PRICE: You can answer if you
5 know.

6 THE WITNESS: Can you reread that
7 question, please?

8 EXAMINER PRICE: Why don't we rephrase it
9 to make it more clear.

10 MR. MICHAEL: That would be fine, your
11 Honor.

12 Q. (By Mr. Michael) Mr. Donlon, before staff
13 signed on to an amended stipulation that would
14 authorize --

15 EXAMINER PRICE: Let's not preface it
16 with that.

17 MR. MICHAEL: That's my favorite part.

18 EXAMINER PRICE: I know.

19 MR. McNAMEE: I was going to object to
20 that. Take all the fun out of this.

21 EXAMINER PRICE: Let me take a shot. In
22 the course of investigating the company's ESP
23 applications in this case, did the staff issue a data
24 request inquiring what the company used the
25 \$110 million from the SSR for? To the best of your

1 knowledge. I am sure you had lots of data requests.

2 THE WITNESS: I do not remember if a
3 specific data request went out asking that specific
4 question.

5 MR. MICHAEL: And if I might, your Honor.

6 Q. Mr. Donlon, same question regarding the
7 ESP I rider?

8 A. I do not remember if a data request went
9 out specific to that. I would not have issued one,
10 but I can't remember all of the data requests that my
11 staff issued.

12 Q. And did staff consider and evaluate at
13 all the degree to which it should sign on to this
14 amended stipulation given that Dayton Power and Light
15 is in a financial crisis notwithstanding they charged
16 consumers all that money under the ESP II rider and
17 ESP I rider?

18 MR. McNAMEE: Objection.

19 EXAMINER PRICE: Grounds?

20 MR. McNAMEE: That goes directly to
21 settlement discussions, the mind-set of the staff
22 while involved in those discussions, and why they did
23 what they did.

24 EXAMINER PRICE: Sustained.

25 Mr. Donlon, I do have a question while we

1 are on this topic. Could you turn to your -- the
2 stip page 5, section b.

3 THE WITNESS: Yes, sir.

4 EXAMINER PRICE: One of the differences
5 between the DMR and the SSR is the existence of these
6 requirements as to what the company can do with the
7 money; is that correct?

8 THE WITNESS: Correct.

9 EXAMINER PRICE: Thank you. Thank you.

10 MR. MICHAEL: May I have just 5 minutes,
11 your Honor, to consult with my colleagues? I think I
12 am done, but I would like the opportunity to do that,
13 please.

14 EXAMINER PRICE: Let's go off the record
15 for 10 minutes. Everybody deserves a break at this
16 point.

17 (Recess taken.)

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

20 Mr. Michael.

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

23 Thank you, Mr. Donlon.

24 EXAMINER PRICE: Thank you.

25 Mr. Sharkey, I neglected to ask you if

1 you had any cross for this witness. Do you have any
2 cross?

3 MR. SHARKEY: I have none, your Honor.

4 EXAMINER PRICE: Any other parties
5 opposing the stipulation have cross for this witness?

6 Seeing none, redirect?

7 MR. McNAMEE: None. Staff would move for
8 the admission of Staff Exhibit 2.

9 EXAMINER PRICE: Maybe I have questions.

10 MR. McNAMEE: Okay. I'm sorry.

11 EXAMINER PRICE: I don't have any
12 questions. You are excused.

13 MR. McNAMEE: Playing with us.

14 EXAMINER PRICE: Any objection to the
15 admission of Staff Exhibit 2?

16 Seeing none, it will be admitted.

17 (EXHIBIT ADMITTED INTO EVIDENCE.)

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

19 (Discussion off the record.)

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

22 Company, do you have any rebuttal
23 testimony?

24 MR. SHARKEY: No, your Honor.

25 EXAMINER PRICE: Thank you.

1 We had discussion off the record about
2 briefs. Initial briefs will be due Friday, May 5,
3 and reply briefs will be due on May 15.

4 Any other issues we need to address
5 before we go off the record for the last time?

6 Seeing none, we are adjourned.

7 Thank you all.

8 (Thereupon, at 11:08 a.m., the hearing
9 was concluded.)

10 - - -

1 CERTIFICATE

2 I do hereby certify that the foregoing is
3 a true and correct transcript of the proceedings
4 taken by me in this matter on Tuesday, April 11,
5 2017, and carefully compared with my original
6 stenographic notes.

7
8
9 Karen Sue Gibson, Registered
10 Merit Reporter.

11 (KSG-6345)

12 - - -
13
14
15
16
17
18
19
20
21
22
23
24
25

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

4/14/2017 2:42:23 PM

in

Case No(s). 16-0395-EL-SSO, 16-0396-EL-ATA, 16-0397-EL-AAM

Summary: Transcript in the matter of The Dayton Power and Light Company hearing held on 04/11/17 - Volume V electronically filed by Mr. Ken Spencer on behalf of Armstrong & Okey, Inc. and Gibson, Karen Sue Mrs.