

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of the :
 Application of The Dayton :
 Power and Light Company : Case No. 15-1830-EL-AIR
 for an Increase in Its :
 Electric Distribution :
 Rates. :

In the Matter of the :
 Application of The Dayton :
 Power and Light Company : Case No. 15-1831-EL-AAM
 for Accounting Authority. :

In the Matter of the :
 Application of The Dayton :
 Power and Light Company : Case No. 15-1832-EL-ATA
 for Approval of Revised :
 Tariffs. :

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PROCEEDINGS

before Mr. Gregory Price and Ms. Patricia Schabo,
 Attorney Examiners, at the Public Utilities
 Commission of Ohio, 180 East Broad Street, Room 11-C,
 Columbus, Ohio, called at 1:30 p.m. on Thursday,
 July 19th, 2018.

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

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1 APPEARANCES:

2 Faruki Ireland Cox Rhinehart & 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 Mr. Michael Schuler,
 10 Regulatory Counsel
 11 1065 Woodman Drive
 12 Dayton, Ohio 45432

13 On behalf of the Applicant.

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

18 On behalf of the Ohio Partners for
 19 Affordable Energy.

20 Boehm, Kurtz & Lowry
 21 By Ms. Jody Kyler Cohn,
 22 36 East Seventh Street, Suite 1510
 23 Cincinnati, Ohio 45202

24 On behalf of the Ohio Energy Group.

25 McNeas, Wallace & Nurick LLC
 By Mr. Matthew Pritchard
 21 East State Street, 17th Floor
 Columbus, Ohio 43215

On behalf of the Industrial Energy Users
 of Ohio.

IGS Energy
 By Mr. Joseph Olikier
 and Mr. Michael A. Nugent
 6100 Emerald Parkway
 Dublin, Ohio 43016

On behalf of IGS Energy.

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APPEARANCES: (Continued)

Carpenter Lipps & Leland LLP
By Ms. Kimberly W. Bojko
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.

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

On behalf of the Environmental Law &
Policy Center.

The Law Office of Robert Dove
By Mr. Robert Dove
P.O. Box 13442
Columbus, Ohio 43213

On behalf of the Natural Resources
Defense Council.

Bruce E. Weston, Ohio Consumers' Counsel
By Mr. Christopher Healey,
Assistant Consumers' Counsel
65 East State Street, 7th Floor
Columbus, Ohio 43215-4213

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

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APPEARANCES: (Continued)

Mike DeWine, Ohio Attorney General
Mr. William Wright,
Section Chief
By Mr. Thomas W. McNamee,
Assistant Attorney General
30 East Broad Street, 16th Floor
Columbus, Ohio 43215

On behalf of the Staff of the PUCO.

Calfee, Halter & Griswold LLP
By Mr. Mark T. Keaney,
1200 Huntington Center
41 South High Street
Columbus, Ohio 43215

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

Whitt Sturtevant LLP
By Mr. Mark Whitt
and Ms. Rebekah J. Glover
88 East Broad Street, Suite 1590
Columbus, Ohio 43215

On behalf of the Retail Energy Supply
Association.

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1 Thursday Afternoon Session,
2 July 19th, 2018.

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4 EXAMINER PRICE: Let's go on the record,
5 please. Good afternoon. The Commission has set for
6 hearing at this time and place Case No.
7 15-1830-EL-AIR, being In the Matter of the
8 Application of Dayton Power and Light Company for an
9 Increase in Its Electric Distribution Rates.

10 My name is Gregory Price. With me is
11 Patricia Schabo. We are the Attorney Examiners
12 assigned to preside over today's prehearing
13 conference.

14 Let's go ahead and take appearances of
15 the parties starting with the company.

16 MR. SHARKEY: Yes, your Honor, it's Jeff
17 Sharkey, from Faruki, Ireland, Cox, Rhinehart &
18 Dusing on behalf of the Dayton Power and Light
19 Company.

20 MR. SCHULER: Mike Schuler on behalf of
21 the Dayton Power and Light Company.

22 MR. PRITCHARD: On behalf of Industrial
23 Energy Users of Ohio, Matt Pritchard with the law
24 firm McNees, Wallace & Nurick, 21 East State Street,
25 Columbus, Ohio, 43215.

1 MR. HEALEY: Afternoon. On behalf of
2 the Ohio Consumers' Counsel, I'm Christopher Healey.
3 Thank you.

4 MS. GLOVER: On behalf of the Retail
5 Energy Supply Association, from the law firm Whitt,
6 Sturtevant, Rebekah Glover, 88 East Broad Street,
7 Suite 1590, Columbus, Ohio 43215.

8 MR. OLIKER: Good afternoon, your Honor.
9 On behalf of IGS Energy, Joe Oliker, 6100 Emerald
10 Parkway, Dublin, Ohio 43016.

11 MS. COHN: On behalf of Ohio Energy
12 Group, Jody Kyler Cohn.

13 MS. BOJKO: Good afternoon. On behalf
14 of the Ohio Manufacturer's Association Energy Group,
15 Kimberly W. Bojko with Carpenter, Lipps & Leland, 280
16 North High Street, Suite 1300, Columbus, Ohio 43215.

17 MS. WHITFIELD: On behalf of The Kroger
18 Company, Angela Paul Whitfield with the law firm
19 Carpenter, Lipps & Leland.

20 MS. FLEISHER: Good afternoon. Madeline
21 Fleisher on behalf of the Environmental Law & Policy
22 Center, 21 West Broad Street, 8th floor, Columbus,
23 Ohio, 43215.

24 MR. DOVE: On behalf of Natural
25 Resources Defense Council, Robert Dove, law office of

1 Robert Dove, P.O. Box 13442, Columbus, Ohio 43215.

2 MS. MOONEY: On behalf of Ohio Partners
3 for Affordable Energy, Colleen Mooney.

4 MR. MC NAMEE: For the Staff of the
5 Public Utilities Commission of Ohio, I'm Thomas
6 McNamee, the address is 30 East Broad Street,
7 Columbus, Ohio, 16th floor, 43215.

8 EXAMINER PRICE: Thank you. This
9 prehearing conference was -- did I miss --

10 MR. KEANEY: Mark Keaney on behalf of
11 Honda and the City of Dayton, law firm of Calfee,
12 Halter & Griswold.

13 EXAMINER PRICE: One more time. This
14 prehearing conference was scheduled at the request of
15 the company in response to the filing of a subpoena
16 by the Retail Owner Supply Association on June --
17 July 17, 2018. Mr. Sharkey.

18 MR. SHARKEY: Yes, your Honor. I would
19 like to move to quash the subpoena that was attached
20 to the motion that you've just mentioned. I'd like
21 to quash it on five separate and independent grounds,
22 the first two of which, your Honor, would quash the
23 subpoena in its entirety, and the last three grounds
24 would quash it as to specific individuals who are
25 listed in the subpoena.

1 Would you like me to proceed to
2 argument, your Honor?

3 EXAMINER PRICE: Yes, please.

4 MR. SHARKEY: The first ground, your
5 Honor, is based on a rule that the Commission has
6 that says parties need to submit one witness to
7 support a stipulation, and there's a Commission
8 precedent. If can I approach the Bench, please?

9 EXAMINER PRICE: You may.

10 MR. SHARKEY: These are excerpts of
11 a 127-page opinion. Your Honor, I've given you
12 excerpts of a Commission decision from an Ohio Power
13 case, Case No. 14-1693-EL-RDR, and in this case, I
14 notice from the excerpts I have, there's -- copy job
15 there's inadvertently two pages 17, but on page 17 it
16 describes the fact that there was a stipulation, and
17 in that case OCC had served subpoenas on a number of
18 the signatory parties to the stipulation seeking to
19 get certain information out of them.

20 The Commission -- I'm sorry. The
21 Attorney-Examiner had quashed the subpoena and the
22 Commission affirmed that decision on two grounds.

23 The first one, which is discussed on
24 page 17, isn't applicable here, but the second one we
25 believe is directly applicable, and that starts on

1 page 18, your Honor, up at the top starting with the
2 word "Additionally" in line 2.

3 And what the Commission ruled is the
4 rule I mentioned, Ohio Administrative Code
5 4901-1-30(D), requires one signatory party to file
6 and provide supporting testimony, and that the
7 subpoena seeking to force additional witnesses to
8 testify violates the rule.

9 I mean, the Commission said, you know,
10 that the parties get to determine how many witnesses
11 and what witnesses they want to call to demonstrate
12 that a stipulation is reasonable and satisfies the
13 Commission's three-part test.

14 So I believe this Commission decision,
15 your Honor, is precisely on point here, and
16 establishes that a subpoena seeking to compel
17 additional persons to testify from the signatory
18 party is impermissible.

19 The second ground, your Honor, is that,
20 as you know, Ohio Administrative Code 4901-1-25(C)
21 allows subpoenas that are unreasonable or oppressive
22 to be quashed. And we believe that the subpoena here
23 to ten new witnesses -- one of whom we already
24 planned to call, Mr. Bentley -- but ten new
25 witnesses, is unreasonable and oppressive for several

1 reasons.

2 Specifically, your Honor, at the prior
3 June 20 pretrial conference I had stated DP&L's
4 intent to call two witnesses in support of the
5 stipulation, that would be Sharon Schroder who has
6 filed testimony regarding the three-part test, and
7 Joe Bentley's prior supplemental testimony relating
8 to tree trimming expenses.

9 That was nearly a month ago, your Honor,
10 and RESA has waited, however, until six days before
11 the hearing is due to start to file a motion to
12 compel the attendance of ten new witnesses.

13 No notice to us that that was coming, at
14 least certainly that breath, and at this point in
15 time, your Honor, it's an unreasonable burden and
16 unduly oppressive to try to force ten new witnesses
17 into the hearing. There's not sufficient time to
18 prepare those witnesses, it's unreasonable in scope.

19 And again, your Honor, if I could
20 approach again?

21 EXAMINER PRICE: You may.

22 MR. SHARKEY: Your Honor, I've handed
23 out a copy of an Opinion and Order from a Cincinnati
24 Gas & Electric Company case, Case No. 84-1187, and if
25 you turn to page 9 of the case you can see some of

1 the highlighting that was on the document.

2 But again, it's a case that involves a
3 stipulation, and counsel for the City of Cincinnati,
4 among other things, sought to -- I'm looking about
5 nine lines down -- issue a subpoena to O'Brien and
6 Fitzpatrick & Associates, who earlier is described in
7 the Opinion as a consultant that was hired by Staff
8 in the case.

9 And essentially the City of Cincinnati
10 was attempting to turn the litigation over, the
11 reason was the stipulation, into a much larger
12 endeavor including subpoenaing Staff witnesses and
13 such, and much more aggressive discovery.

14 And so then about 15 lines down, the
15 line begins with the word "Validation", the
16 Commission rejected that saying the proposal is that
17 they be accepted in lieu of whatever would have
18 resulted from a lengthy, expensive process fully
19 litigated in this matter. To examine the stipulation
20 in the manner proposed by the city is to start down
21 the very track that the settlement is designed to
22 avoid.

23 And the Commission goes on to describe
24 that the purpose of the settlement included
25 significantly narrowing the scope of the opinion --

1 the scope of the hearing, rather.

2 So, your Honor, we believe that this
3 subpoena seeking to add ten new witnesses at this
4 late date is both unreasonable and oppressive.

5 The third ground, your Honor, is we
6 believe that the testimony that these witnesses could
7 potentially offer is beyond the scope of the
8 proceeding, and in our view, your Honor, this
9 proceeding would and could involve two things; one,
10 things that would be covered in the objections to the
11 Staff Report.

12 As you know by law and by Commission
13 rule, the Staff Report frames the issues, and any
14 issues that you wanted to raise had to have been
15 raised in your objections, and then obviously, your
16 Honor, if there's things that happen after the Staff
17 Report.

18 In addition, they could reasonably
19 challenge those. So the stipulation does introduce a
20 couple of new items that weren't covered in the Staff
21 Report, but that's a pretty narrow group.

22 And as best as we can tell, your Honor,
23 we tried to figure out how these witnesses, many of
24 whom touch on nothing that relates to the objections,
25 other than a hand full of them, that they appear to

1 fall within the scope of those categories.

2 Among other things, your Honor, just to
3 give an example, Al Felsenthal was the company's
4 lead-lag witness. We don't see how, for example, his
5 testimony is conceivably related to anything that
6 would be relevant to the marketers.

7 The fourth ground, your Honor, is that
8 the subpoena, itself -- and I'm looking on page 2 of
9 the subpoena -- says that DP&L is required to present
10 these persons, or a person with comparable knowledge
11 and expertise relating to the content contained in
12 prefiled testimony in discovery responses provided by
13 these persons.

14 Your Honor, we object to that ground on
15 a couple of bases, but before I get into those, just
16 so you know, there are two people who are listed on
17 the subpoena who are no longer employees of the
18 company. That would be Yvonna Steadman and Emily
19 Rabb.

20 Initially, your Honor, a subpoena can't
21 do that, a subpoena for appearing can't do that. A
22 subpoena has to subpoena persons, and they have to be
23 specifically identified.

24 The Commission has a rule for
25 depositions where you can describe somebody and

1 describe their knowledge, and that is Rule
2 4901-1-21(F). But the subpoenas are very clear, you
3 need to identify specific persons and compel them to
4 testify. So first of all, that portion of the
5 subpoena is improper for that reason.

6 And also, your Honor, for the -- really
7 the reason is at this point in time that's an
8 unreasonable and undue burden on the company, six
9 days in advance of the hearing, to expect the company
10 to come up with somebody else who is as knowledgeable
11 as the two employees who are no longer with the
12 company.

13 Fifth ground, your Honor, I had relates
14 to outside experts of the company, of whom there are
15 three on the list.

16 Al Felsenthal, as I mentioned earlier,
17 he did the lead-lag study, Bruce Chapman, he did the
18 cost of service study, and Don Rennix -- Mr. Rennix
19 is a former employee of the company, but he retired
20 from the company numerous years ago and now works as
21 a consultant on a specific contract basis for the
22 company.

23 Your Honor, we believe as to outside
24 experts, they are not subpoenaable in that they are
25 working as consultants to the company. You can't

1 force the company to bring in consultants that it
2 does not wish to call.

3 And so, you know, in essence, these
4 consultants are people who are sponsoring opinions on
5 behalf of the company, and it's inappropriate,
6 particularly as to Mr. Felsenthal and Mr. Chapman,
7 your Honor, because they have no facts whatsoever.
8 They are not employees of the company, they rely on
9 facts that were given to them by the company, and
10 sponsor opinions. So we believe that they are not
11 subpoenaable.

12 Even if they were, your Honor, we
13 believe that RESA would have to pay their hourly
14 rate. These are people who work and earn their
15 money, earn their living by working, and if you're
16 going to try to compel them to work on your behalf,
17 you'd have to pay their hourly rate and that would
18 include travel and hotel accommodations if they are
19 out of state.

20 And finally, your Honor, relating to
21 outside experts, we have communicated with
22 Mr. Chapman, and he's presently in Europe, won't be
23 back into the country until July 30th.

24 So those are the five grounds we move to
25 quash the subpoena on, your Honor. I would note that

1 as I stand here today, I am not aware of the subpoena
2 having been served, so I don't know the method of
3 service that's going to be used.

4 So I would like to reserve my right,
5 once the subpoenas have been served, to object, your
6 Honor. As you may know, some of these witnesses are
7 outside the State of Ohio and we believe are not
8 subject to service under the applicable rules, but
9 we'll just wait to see until service is attempted
10 before we make arguments related to it.

11 So that's what I have.

12 EXAMINER PRICE: Thank you. Would any
13 of the signatory parties care to speak in support of
14 the company? Seeing none --

15 MR. PRITCHARD: Were there
16 opportunities -- I'll let Joe go first, but I might
17 take issue with either of the first two grounds.
18 But --

19 EXAMINER PRICE: You might take issues?

20 MR. PRITCHARD: I might disagree with
21 the characterization of the first Opinion and Order,
22 but --

23 EXAMINER PRICE: I'm not sure that is
24 the direction Mr. Sharkey wants to go, but --

25 MR. PRITCHARD: I will defer to the end.

1 EXAMINER PRICE: Ms. Glover, Mr. Oliker,
2 which one of you are going to take the lead on this?

3 MR. OLIKER: I can, your Honor. I can
4 speak if you want me to on just a few things.
5 Recognizing the subpoena was served by RESA, I can
6 first say that before a motion to quash is going to
7 be filed under the Civil Rules, under 45, you're
8 supposed to at least contact the person that is
9 serving the subpoena to try to relieve any sort of
10 undue burden, you know, sort of meet to confer
11 requirement. That did not happen. They simply went
12 to the Bench, called this conference, and tried to
13 quash the subpoena in its entirety.

14 And although there are 11 witnesses on
15 this subpoena list, I think it is the intent of RESA
16 and I just to hopefully not to call more than a hand
17 full of them.

18 But the problem you see, is because of
19 the fact that there are -- there's a Staff Report
20 that largely relies upon DP&L information, and
21 there's that testimony that relies upon DP&L
22 witnesses, some of those witnesses which will be out
23 of the country until July 30th allegedly, there are
24 some serious issues with how we can develop a record
25 in this case.

1 So I'll come back to some of those
2 points in a moment, but starting with number one
3 which Mr. Sharkey said there only has to be one
4 witness to support a stipulation.

5 The precedent that he cites to is the
6 AEP PPA case which was not a distribution rate case,
7 and does not contain the similar issues to as we have
8 in this proceeding. Given the fact that although the
9 company can choose which witness to put on in support
10 of the stipulation, that does not speak to the
11 evidentiary burden in a proceeding.

12 There is a burden to show sufficient
13 facts to support a stipulation. A stipulation does
14 not speak for itself from the evidentiary
15 perspective. There is Supreme Court evidence to
16 suggest that. I would point you to the AEP Energy
17 Efficiency Decision, I believe it is 09-1089,
18 where --

19 EXAMINER PRICE: That's not a
20 distribution rate case either.

21 MR. OLIKER: It was not, but it does go
22 to the point that the stipulation and testimony does
23 not speak -- stipulation does not speak to the
24 evidence, there must be testimony and facts
25 supporting that stipulation in evidence.

1 And the witnesses that we have
2 identified contain the factual information that
3 actually relates to our objections, which is DP&L
4 specific information in this case.

5 There is objections to the costs that
6 are embedded in distribution rates which actually
7 relate to the standard service offer. And if you
8 look at the Staff Report, and if you look at Craig
9 Smith's testimony, what do they say? They said we
10 asked the company is there any subsidy in
11 distribution rates, and what did you do.

12 EXAMINER PRICE: Let's set Mr. Smith
13 aside for a moment, because this is a key issue, and
14 that is Mr. Bentley and the confusion over whether
15 Mr. Bentley is or is not going to be called by the
16 company.

17 Mr. Sharkey, I think indicated in our
18 previous prehearing conference, and seemed to
19 reiterate today, that Mr. Bentley is going to be
20 called by the company. Is that correct, Mr. Sharkey?

21 MR. SHARKEY: Yes, your Honor, he's
22 going to be the first witness we call Monday morning.

23 EXAMINER PRICE: So we don't need to
24 worry anything about Mr. Bentley, he's going to
25 attend the hearing, and the testimony of Mr. Smith

1 has accepted or relies on Mr. Bentley. You'll have
2 your shot at Mr. Bentley, so let's set Mr. Bentley
3 aside and deal with the other ten.

4 MR. OLIKER: Okay. And just so we can
5 put a bow on that one, we're not going to be limited
6 to the supplemental testimony, which may be different
7 than the information that Mr. Smith cites.

8 MR. SHARKEY: I just object to seeking
9 an advisory opinion. We should be seeking -- we
10 should be addressing evidentiary rulings if and when
11 Mr. Oliker may question.

12 EXAMINER PRICE: I agree.

13 MR. OLIKER: Setting that aside, and
14 putting Mr. Smith's testimony aside, which I think is
15 what you just asked, your Honor, the Staff Report as
16 well relies on, for example, Bruce Chapman, the cost
17 of service study --

18 EXAMINER PRICE: I think -- I think we
19 should probably do this systematically, Mr. Oliker,
20 so let's start with -- we have dealt with
21 Mr. Bentley.

22 MR. OLIKER: Okay.

23 EXAMINER PRICE: Let's move on to
24 Mr. Parke.

25 MR. OLIKER: I'm sorry?

1 EXAMINER PRICE: Mr. Parke. Mr. Parke.
2 We're going in the order you set them for.

3 MR. OLIKER: Okay.

4 EXAMINER PRICE: And let's -- what's the
5 substance of Mr. Parke's testimony?

6 MR. OLIKER: Before I even do --

7 EXAMINER PRICE: No, you can answer my
8 questions, and then you come back to what you want to
9 say.

10 MR. OLIKER: Mr. Parke and all these
11 witnesses, your Honor, generally speaking, we are
12 seeking to discuss with them --

13 EXAMINER PRICE: No, I want to know what
14 the substance of his testimony was.

15 MR. OLIKER: I will give that to you.
16 It is related to the specific cost information
17 regarding the cost and distribution rates that are
18 related to the SSO. Those costs are all largely
19 framed on what is known as the C schedules and B
20 schedules, operation and maintenance expense.

21 EXAMINER PRICE: Okay. And which of
22 your objections does this relate to?

23 MR. OLIKER: This relates to the
24 objection that the Staff Report did not appropriately
25 allocate costs to the standard service offer related

1 to that service. I can't give you the exact
2 objection number.

3 EXAMINER PRICE: That's okay. I
4 understand. And which of Staff's witnesses do you
5 believe relied upon Mr. Parke's testimony?

6 MR. OLIKER: I can tell you Mr. Smith
7 includes several discovery responses provided by
8 Mr. Parke, and it's attached -- includes Mr. Parke,
9 Mr. Chapman, Mr. Bentley, I believe Ms. Steadman.

10 There are several, for example, but
11 getting to -- even away from Mr. Smith's testimony
12 and to the actual cost, because our objection and
13 what we are seeking to establish in this case, the
14 record we're seeking to develop, relates to DP&L
15 specific information regarding costs that they have
16 incurred and are proposing to recover through their
17 noncompetitive distribution rates.

18 I wish there was one witness that
19 sponsored all the C schedules, and ideally we would
20 only cross-examine one, two, three of these
21 witnesses, but the problem is, if you go through the
22 C schedules and the B schedules, there's a lot of
23 different people, and then if you read the testimony
24 there's a lot of cross references to other people.

25 If the company had called us before this

1 prehearing conference we could have said if you can
2 offer one or two people that can speak to this
3 information, we would be happy to rely upon them, and
4 then go from there in the event that they can't
5 answer our questions.

6 EXAMINER PRICE: I don't think you need
7 a lot of weight when you file a subpoena on the very
8 last day. I don't think you need a lot of weight of
9 why the company didn't call you first on a rule that
10 we have not adopted, although we're guided by the
11 Civil Rules. So let's set aside that argument, and
12 just stick to the facts of this case.

13 MR. OLIKER: And I would also mention we
14 did indicate -- I don't know if it was Mr. Sharkey
15 that we spoke to at the last prehearing conference,
16 that there were additional witnesses that we may want
17 to speak to and we weren't quite clear who exactly
18 was going to be called. I agree there was some
19 confusion on that point.

20 EXAMINER PRICE: I guess what is
21 troubling me, Mr. Oliker, is in a rate case we start
22 with the application. The Staff files a Staff
23 Report, and then you get to file your objections.
24 And it seems like you want to relitigate the entire
25 rate case even beyond your actual objections.

1 MR. OLIKER: Your Honor, I believe we
2 are seeking to develop a record based upon our
3 objections, and it is basically one objection that we
4 are focusing on.

5 For most of our objections I don't
6 believe that the conversation with DP&L witnesses is
7 nearly as necessary, but there is a concern for -- I
8 mean, if we're still talking Mr. Parke, I can pull up
9 Mr. Smith's discovery responses.

10 He asked Mr. Parke the question in
11 discovery -- if I can find it -- "Please detail if
12 any of the difference in distribution services
13 between shopping and nonshopping customers" -- and it
14 says, "Please see company response. Witness
15 responsible, Nathan Parke."

16 Also asked him questions such as, "Does
17 the company subsidize SSO service in distribution
18 rates?" Response: "No." I mean, how can we not be
19 permitted to ask him about his response to that
20 question?

21 EXAMINER PRICE: Okay. Move on to your
22 next one, Tyler -- I won't endeavor to pronounce that
23 one. Mr. Sharkey?

24 MR. SHARKEY: Tuescher, your Honor.

25 EXAMINER PRICE: And Mr. Tuescher.

1 Which objections does this relate to that you filed?

2 MR. OLIKER: If you were to review the
3 objections, one of the items that was teed up for
4 discussion in this case, and actually the stipulation
5 in the 16-395 case, was uncollectible expenses to the
6 extent they also exist in distribution rates.

7 Tyler Tuescher -- and I believe it is
8 relied upon in Mr. Smith's testimony, if I can just
9 find that.

10 Mr. Tuescher, I can tell you, speaks to
11 the collection of uncollectible expenses, and he has
12 done so in interrogatories and in this proceeding. I
13 don't know if he specifically listed on Craig Smith's
14 testimony, but that is the purpose, is to explore the
15 additional uncollectible expenses.

16 EXAMINER PRICE: You can't identify
17 where Mr. Smith relies upon it?

18 MR. OLIKER: I may be able to if I can
19 have one minute, your Honor.

20 EXAMINER PRICE: Take your time.

21 MR. OLIKER: I can tell you that he
22 does -- he does sponsor Schedule C-7 which breaks
23 down DP&L's uncollectible expenses.

24 I think there's some back and forth
25 between him and Ms. Niehaus over who actually has

1 responsibility for that, but we designated him based
2 upon understanding that it was within his expertise.

3 EXAMINER PRICE: Okay. Moving right
4 along. Mr. Chapman. Which objection are you --

5 MR. OLIKER: Mr. Chapman is
6 unfortunately one of the most relevant witnesses
7 because he is the individual that performed the cost
8 of service study, and the Staff Report accepted the
9 cost of service study without change.

10 And he is also relied upon in the
11 very -- Attachment 1, and by Mr. Smith regarding --
12 it says, "The cost of service study based upon DP&L's
13 current distribution rate case filing, please provide
14 the cost of service identifying the actual customer
15 related costs required to provide SSO service."

16 EXAMINER PRICE: Okay. Let's go on to
17 Ms. --

18 MR. OLIKER: I'm sorry, I didn't --

19 EXAMINER PRICE: Craig Forestall.

20 MR. OLIKER: And Craig Forestall is
21 responsible in conjunction, I believe, with
22 Mr. Chapman of preparing the C schedules, especially
23 C-2, was prepared by Craig Forestall, and Schedule
24 C-2.1 was also prepared by Craig Forestall in
25 conjunction with Emily Rabb.

1 Those are the jurisdictional items
2 proposed for recovery through operation and
3 maintenance expenses, which provide the very
4 foundation upon which the cost of service study is
5 based. It is allocating those costs and it provides
6 the scope of which expenses are slated for recovery
7 in this case.

8 EXAMINER PRICE: What schedules were
9 those?

10 MR. OLIKER: I'm sorry. What was that,
11 your Honor?

12 EXAMINER PRICE: What were the schedules
13 again you say he was responsible for?

14 MR. OLIKER: C-2 and 2.1, which is
15 probably I think, if my memory serves me, even more
16 important. And to my understanding, Ms. Rabb is not
17 employed by the company anymore, is that true?

18 MR. SHARKEY: That is correct.

19 MR. OLIKER: And that is the other
20 reason why he may be of particular importance to the
21 extent that Ms. Rabb cannot be here.

22 EXAMINER PRICE: Ms. Rabb may or may not
23 be able to be here?

24 MR. OLIKER: And we do understand to the
25 extent, your Honor, that if somebody is no longer

1 employed by the Dayton Power and Light Company, we do
2 not expect them to appear.

3 EXAMINER PRICE: We'll skip Ms. Rabb.

4 MR. OLIKER: But we do believe that the
5 subject matter within her testimony may be of
6 importance if it cannot be spoken to by another
7 witness, and ideally that would be the process that
8 we would work out. We're after the information and
9 that's really our goal, is to develop a record.

10 EXAMINER PRICE: The next one,
11 Mr. Felsenthal.

12 MR. OLIKER: Mr. Felsenthal --

13 MR. SHARKEY: Felsenthal.

14 MR. OLIKER: -- prepared what is
15 referred to commonly as the lead-lag study, and the
16 lead-lag study is what is often required under
17 Commission rules or -- for regulatory practice in
18 order to support a cash working capital requirement.

19 The cash working capital requirement is
20 an allowance of expenses to a utility who can't
21 afford the time value of money.

22 And in our objections to the Staff
23 Report, and the testimony of Mr. Hess, we have
24 questioned whether it is appropriate to recover all
25 the cash working capitals for distribution rates when

1 a portion of that time value of money goes to the
2 difference in time between when they collect and when
3 they pay auction bidders for the SSO, because they
4 are effectively subsidizing that service by causing
5 the distribution utility to bear the cost of --

6 EXAMINER PRICE: Why can't Mr. Smith
7 answer these questions? I mean, your objection was
8 to his Staff Report.

9 MR. OLIKER: He does not speak to DP&L's
10 cash working capital requirements in any fashion.

11 EXAMINER PRICE: So that's a deficiency
12 you can point out.

13 MR. OLIKER: For the sake of being
14 flexible, your Honor, I think if we had to let
15 somebody go, Mr. Felsenthal would be one of these
16 individuals.

17 EXAMINER PRICE: That's easy. Okay.
18 Ms. Steadman, which objection is her testimony
19 relevant to?

20 MR. OLIKER: Yvonna Steadman supports
21 Schedule 3.11, which -- and she is listed as the
22 witness responsible to discuss allocations of labor
23 expenses from the AES Corporation to the Dayton Power
24 and Light Company, as well as total labor expenses
25 included in the test year on Schedule 3.12.

1 Because of the fact that much of the
2 expenses that Mr. Hess has sought to allocate are
3 based upon things like call center expenses, for
4 example, administrative and general expenses
5 contained in, I think it's the 928 account, 929, 930
6 and also the 903 accounts, she is the individual from
7 DP&L that can speak to what kinds of expenses they
8 are seeking to recover, and whether they relate to
9 the SSO, what people's scope of responsibilities may
10 be, for example.

11 EXAMINER PRICE: And why was that
12 information not available to you in discovery?

13 MR. OLIKER: There is -- keep in mind,
14 your Honor, one of the issues that we have in this
15 proceeding is when we have asked for an allocation of
16 costs between various services and what people may be
17 doing from DP&L, the discovery responses have been
18 slightly evasive, and said that costs are not tracked
19 in a certain fashion.

20 EXAMINER PRICE: That's a matter for a
21 motion to compel, not a subpoena at this point.
22 These are not -- where does Mr. Smith -- I assume you
23 have Mr. Smith's testimony. Where does he rely on
24 Ms. Steadman?

25 MR. OLIKER: I was going to check if she

1 is also in there, your Honor. I don't know for sure,
2 but one of the other reasons why it's important is to
3 the extent that there are allocation factors between
4 AES Corporation to DP&L, and between DP&L and various
5 services such as distribution, generation and
6 transmission, and labor, that I'm not sure that's
7 really the type of discussion that can be obtained
8 readily in discovery, because it is more a narrative
9 response and discussion of background regarding that
10 type of information.

11 MR. SHARKEY: Your Honor, if I may
12 interject, it's a reminder, but Ms. Steadman is no
13 longer with the company.

14 EXAMINER PRICE: That would make it
15 difficult. Mr. Rennix.

16 MR. OLIKER: And Mr. Rennix speaks to
17 capitalized costs that are proposed for recovery in
18 the B schedules, and there is questions regarding --
19 for Mr. Rennix regarding which -- what are in certain
20 of those accounts that are responsible for recovery
21 in this case, such as DP&L's headquarters and other
22 capital costs that DP&L proposed for recovery in
23 distribution rates, locations of call centers, things
24 of that nature.

25 EXAMINER PRICE: Can you show where

1 Mr. Smith relied upon Mr. Rennix' testimony?

2 MR. OLIKER: I don't know if Mr. Smith
3 relies upon Mr. Rennix. I don't believe he does,
4 your Honor.

5 EXAMINER PRICE: Mr. Tornquist?

6 MR. OLIKER: I believe Mr. Tornquist, as
7 well as Emily Rabb, speak to customer service,
8 informational sales, and general expense.

9 I think Mr. Tornquist also may have had
10 a hand in the development of specific financial
11 allocation factors which go into allocating expenses
12 to DP&L, such as the expenses I just discussed, the
13 customer service, informational sales, and general
14 expense.

15 I believe within the customer service
16 expense would be things such as the call center which
17 Mr. Smith does in fact talk about, although he does
18 not cite Mr. Tornquist.

19 EXAMINER PRICE: And then Ms. Hale?

20 MR. OLIKER: And Ms. Hale, I believe,
21 speaks to the recovery of rate case expense, although
22 I'm going -- Yes, proposed recovery of ESP rate
23 expenses that's now being abandoned by DP&L and
24 accepted by the Staff Report, and going to specific
25 costs that have been incurred by the company.

1 EXAMINER PRICE: So you want to subpoena
2 somebody whose objections have been withdrawn?

3 MR. OLIKER: We are still objecting to
4 the noninclusion of those costs and the allocation of
5 those costs to the --

6 EXAMINER PRICE: But not seeking
7 recovery of those costs?

8 MR. OLIKER: They were seeking recovery
9 of those costs. The stipulation withdraws the
10 recovery of those costs, and it is our position that
11 although those -- the recovery of those costs has
12 been withdrawn, that would result in an indirect
13 subsidy to the SSO, and therefore it is
14 inappropriate, and we are contesting the withdrawal
15 of those expenses from the recovery.

16 EXAMINER PRICE: Any last general
17 thoughts on the motion to quash?

18 MR. OLIKER: I do, your Honor, if I may
19 have --

20 MR. PRITCHARD: Before you rule --

21 EXAMINER PRICE: You'll get a chance.

22 (Pause.)

23 MR. OLIKER: Unconditionally, it's
24 important to know, and your Honor has honed in upon,
25 there is several references in Staff's testimony to

1 witnesses which would not be scheduled for testimony.

2 That would be relying upon hearsay, it
3 would be inadmissible information. And as well as in
4 Mr. Smith's testimony there are several portions of
5 the Staff Report that are based upon DP&L specific
6 information, such as the cost of service study
7 performed by Bruce Chapman which is simply accepted,
8 and as well as the analysis in total in the Staff
9 Report of costs relating to the SSO that are
10 contained in distribution rates.

11 As is stated in Mr. Smith's discovery
12 responses attached to his testimony, and indeed his
13 testimony itself, as well as in the Staff Report
14 itself, it says, "We thought the best way to find out
15 what costs related to the SSO or distribution rates
16 was to ask DP&L," and relying upon the information
17 that DP&L provided them.

18 Therefore the Staff and the Staff Report
19 has completely delegated the issue of what costs
20 related to the SSO are distribution rates to an
21 entity that is no longer providing witnesses to
22 testify on that issue.

23 So therefore, the focus of the subpoena
24 relates to providing the integral witnesses to allow
25 us to develop a record on that issue.

1 EXAMINER PRICE: All these arguments
2 would make a lot more sense if we were sitting here
3 on a motion to compel discovery. Everything you're
4 saying sounds like you're looking for information
5 that might reasonably lead to admissible information.

6 But we're passed discovery. Our
7 discovery deadline came and went a long time ago.
8 Can you help me out here?

9 MR. OLIKER: Your Honor, I think that --
10 that takes the position that a record in a case has
11 to be developed exclusively based upon direct
12 testimony, and --

13 EXAMINER PRICE: No, just the opposite.
14 I'm saying you should have obtained this information
15 in discovery and cross-examined Mr. Smith
16 accordingly.

17 MR. OLIKER: We only saw Mr. Smith's
18 testimony a few days ago, your Honor. We had no idea
19 what he would be submitting, what --

20 EXAMINER PRICE: But you had months --
21 30 months, 40 months, to do the discovery of the
22 company.

23 MR. OLIKER: Right. But that doesn't
24 speak to whether or not Mr. Smith can rely upon
25 information that is out-of-court statements and not

1 otherwise admissible without the presence of a party.

2 EXAMINER PRICE: That's not the question
3 we're talking about. I'm saying you should have
4 obtained -- you had the opportunity to obtain all
5 this information through discovery from the company
6 before Mr. Smith even -- this is your key issue --
7 before Mr. Smith even filed his testimony.

8 MR. OLIKER: I think that is -- that is
9 questionable, your Honor, because of some of the
10 facts and questions that we are speaking about are
11 basic components of the application which are clear
12 based upon the filed documents, and they have
13 described in testimony, but not so easily derived
14 through, for example, written documents and
15 interrogatories to the witnesses.

16 EXAMINER PRICE: There were no
17 depositions in this case?

18 MR. OLIKER: There were not. It seemed
19 to be --

20 EXAMINER PRICE: Well, when you had an
21 opportunity to perform depositions, did you?

22 MR. OLIKER: We did, but such -- in
23 order for that information to be helpful whatsoever,
24 we would have had to have known that we would not be
25 able to subpoena witnesses, and then have to depose

1 them, and then submit their deposition in lieu of the
2 failure of the opposing party to provide them at
3 trial, which I believe shows a course of events which
4 I am not familiar with the current Commission
5 practice of the last ten years, but I'm not saying
6 it's not possible, but it would be highly unusual --

7 EXAMINER PRICE: Why would anybody put
8 on -- if they have withdrawn their objection and not
9 pursuing the objection, why would they put on the
10 witnesses?

11 That's the whole point of a rate case,
12 is to winnow the issues down, right? We start with
13 the application, move on to the Staff Report, move on
14 to the objections, we hear witnesses, and then
15 honestly if you don't brief your objections you lose
16 your objections. Isn't this a winnowing process?
17 You seem to want to go back in time.

18 MR. OLIKER: We were under the
19 impression that they would at least be filing the
20 application in the docket, and the application
21 contained schedules, and our questions relate to
22 information contained in the application, and what is
23 in the schedules, itself, and merely factual
24 information of the company's, which seemed to be most
25 efficiently obtained through cross-examination.

1 EXAMINER PRICE: Let's put some
2 parameters around what you're asking for just so I'm
3 clear.

4 The only Staff witness we're talking
5 about is Mr. Smith, and the only objection we're
6 talking about is your objection to the failure to
7 properly allocate costs between the SSO and the
8 distribution rate base; is that correct?

9 MR. OLIKER: I believe that is correct,
10 your Honor.

11 EXAMINER PRICE: And you're not asking
12 for this for the purpose of the first prong of the
13 three-prong test on stipulations; is that correct?

14 MR. OLIKER: We are not.

15 EXAMINER PRICE: Or the second prong?

16 MR. OLIKER: Whether it is in the public
17 interest or violates regulatory policy principles, I
18 believe it could relate to both of those points
19 because I believe this is a mixture of policy and
20 law.

21 EXAMINER PRICE: Mr. Pritchard.

22 MR. PRITCHARD: Thank you, your Honor.
23 I don't take any position on whether the subpoena
24 should be quashed for the second, third, fourth and
25 fifth grounds that Mr. Sharkey raised.

1 I would note, however, that in the AEP
2 PPA case decision you referenced, OCC sought to
3 subpoena signatory parties that were not the utility,
4 and as reflected in the order on the proposition of
5 why they elected to sign the settlement.

6 So it was confidential settlement
7 discussions on a party that hadn't prepared
8 testimony, which I think is distinguishable from
9 facts that are contained in prefiled testimony.

10 So I would just like to point out that I
11 think it's distinguishable from the present case, but
12 I take no position on whether the subpoena should be
13 quashed.

14 EXAMINER PRICE: Any other signatory
15 parties care to weigh in?

16 MR. MC NAMEE: I might just interject
17 one small matter I guess as a bit of clarification,
18 perhaps.

19 The only explicit reference to a company
20 witness contained within the Staff testimony that I'm
21 aware of is in the testimony of Christina Schaefer
22 who refers to a Company Witness Storm, who is not
23 actually on the subpoena list.

24 Other than that, I don't believe there
25 are any explicit references at all to company

1 witnesses.

2 EXAMINER PRICE: Now, Mr. Smith, in the
3 interest of being thorough, referred to several
4 data -- attached several data responses. And they do
5 actually identify a company witnesses, mostly
6 Bentley.

7 MR. MC NAMEE: True.

8 EXAMINER PRICE: And also Chapman, and
9 also Parke.

10 MR. OLIKER: Your Honor, if I may have
11 one more point.

12 MR. MC NAMEE: That's why I said
13 "explicit".

14 MR. OLIKER: Also I believe under the
15 Commission's rules -- there was some talk about
16 employees versus consultants, and I believe under the
17 subpoena portion of the Ohio Administrative Code for
18 the PUCO, it does say, "The term employee includes
19 consultants and other persons retained or specially
20 employed by a party for purposes of the proceeding."
21 And clearly Mr. Chapman, or anybody else, would fit
22 within that categorization.

23 EXAMINER PRICE: Thank you.

24 Mr. Sharkey.

25 MR. SHARKEY: Yes, your Honor. I'd like

1 to start in the easiest place by responding to
2 Mr. Pritchard before I return to responding to
3 Mr. Oliker's arguments.

4 EXAMINER PRICE: I don't think you need
5 to respond to Mr. Pritchard. Mr. Pritchard was, I
6 think, saying to the Bench don't ever hold this
7 against me in the future. And then his -- not
8 objection, but reservation of rights is noted, and we
9 can move past that.

10 MR. PRITCHARD: Appreciate that.

11 MR. SHARKEY: Fair enough, your Honor.

12 Then in response to Mr. Oliker, a number
13 of points I'd like to make initially. The two cases
14 again that I handed to you are two Commission
15 decisions that we believe are right on point.

16 The first one specifically says -- it
17 affirmed an Attorney-Examiner ruling that says that a
18 party -- you can't force the signatory parties to
19 bring in more witnesses than they want to bring in
20 relating to a stipulation, I think is --

21 EXAMINER PRICE: The difficulty,
22 Mr. Sharkey, with your reference is -- I tried to
23 give Mr. Oliker a way out by saying that they don't
24 relate to the three-part test, but he wouldn't take
25 the opportunity.

1 His position is this has nothing to do
2 with the stipulation, his beef is with Mr. Smith's
3 testimony which was filed in response to his
4 objection. He doesn't care about the stipulation on
5 this, he cares about Mr. Smith's testimony.

6 So I don't know that citing to cases
7 saying we can't -- you can't be forced to call more
8 than one witness for a stipulation is exactly on
9 point here.

10 I suspect that Mr. Oliker wanted to call
11 these witnesses irrespective of not whether there was
12 a stipulation.

13 MR. OLIKER: Absolutely, your Honor. I
14 was simply trying to frame my answer knowing that
15 there may be a three-prong test applied in this
16 proceeding to which I'll have to get my arguments.

17 MR. SHARKEY: Okay, your Honor. In
18 addition, your Honor, many of the points that
19 Mr. Oliker made were essentially assertions,
20 something was inadequately supported by Mr. Smith, or
21 by stipulation or otherwise.

22 And we believe, your Honor, that that is
23 a post hearing briefing argument here, that whether
24 something is adequately supported, whether it
25 constitutes hearsay, those are points that deal with

1 the sufficiency of the record.

2 And while I certainly disagree with
3 Mr. Oliker on those points, those points don't
4 establish any reason to be subpoenaing ten new people
5 at the eleventh hour.

6 I'd also make the point, your Honor,
7 that the focus has been on Mr. Smith's testimony.
8 And Mr. Oliker in fact expressly said that -- in
9 response to your question, that all of the issues
10 related to Mr. Smith's testimony.

11 If you peruse his testimony, including
12 his exhibits, there are three -- three people to whom
13 his exhibits cite to. That would be people -- people
14 he -- that they also subpoenaed, to be clear. That
15 would be Chapman, Parke and Bentley.

16 Bentley is already going to be here,
17 your Honor, and he's the one who is cited most
18 frequently. Mr. Chapman, as I mentioned earlier, we
19 don't think you can force an expert to travel,
20 particularly one who is in Europe, certainly beyond
21 the subpoena power of the Commission. And even if he
22 was within the subpoena power of the Commission, your
23 Honor, it would be their responsibility to pay his --
24 his fees. So that --

25 EXAMINER PRICE: Including travel from

1 Europe? That would be a lot of mileage.

2 MR. SHARKEY: That would be a lot of
3 mileage, your Honor. And then I guess more broadly,
4 I just kind of want to frame how this has come up,
5 your Honor, in terms of the order of things.

6 DP&L filed its application in this case
7 back in 2015, and that's when the cost of service
8 study was filed.

9 Approximately two years later the ESP
10 stipulation was signed, and the ESP stipulation,
11 which IGS and RESA both signed, includes a paragraph
12 that permits them to raise this issue in this case;
13 for instance, an evaluation of whether costs should
14 be allocated to the SSO.

15 But DP&L's application, filed two years
16 before that, of course, didn't touch on that issue,
17 and what they are seeking to do is try to take cost
18 of service studies that were never intended for this
19 purpose, and somehow use them for an evaluation of
20 these costs, and DP&L's discovery response has been
21 pretty clear, it's not something they looked at
22 previously.

23 So I think it's unduly burdensome and
24 unreasonable to start bringing in a bunch of
25 witnesses to address something that they have never

1 looked at.

2 And then finally, your Honor, one minor
3 correction. I believe Mr. Oliker may have misspoke
4 in terms of depositions.

5 There was one deposition of DP&L
6 witnesses in this case, that was Joe Bentley. I
7 don't recall if Mr. Oliker or anybody from RESA was
8 on the phone or questioned Mr. Bentley, but there was
9 one.

10 But certainly IGS and RESA had ample
11 opportunities, your Honor, to conduct discovery on
12 the issues that they wanted.

13 Essentially what they are seeking to do
14 here is, at the last minute, conduct all of their
15 discovery in the record by subpoenaing ten new
16 witnesses, and again we believe that that is
17 unreasonable and oppressive.

18 Could I have just a second, your Honor?

19 EXAMINER PRICE: Yes.

20 (Pause.)

21 MR. SHARKEY: I suppose finally, your
22 Honor, I guess the question about why these witnesses
23 are called. And ultimately, your Honor, they are
24 called to contest -- they are being called to contest
25 the stipulation necessarily because Mr. Smith is

1 testifying in support of the stipulation, so it's not
2 limited to, not really even Mr. Smith's testimony,
3 it's the stipulation to which they respond.

4 EXAMINER PRICE: Thank you.

5 MR. SHARKEY: That's all I have.

6 EXAMINER PRICE: Mr. Oliker, you get the
7 final word.

8 MR. OLIKER: Sure. Just a few points.
9 An interesting issue was raised by the fact that
10 there was a stipulation in the 395 case, and it
11 appears to predate the discovery response, or
12 discovery that was served on DP&L and Mr. Chapman
13 regarding the cost of service study, and that therein
14 lies part of the problem.

15 Although Mr. Chapman I'm sure was told
16 by DP&L regarding the analysis in that case, he
17 didn't really update any of his responses to the
18 Staff, and now the Staff is relying upon Mr. Chapman
19 for purposes of what costs may happen to be in the
20 distribution rates or not be in there.

21 So now we have this where the Staff is
22 trying to implement that stipulation, and they are
23 relying upon his answer, we have no ability to
24 cross-examine Mr. Chapman.

25 So there is the burden of proof issue,

1 and I don't completely disagree that in our post
2 hearing brief we could point to all of the gaps in
3 the evidentiary record and all of the problems
4 regarding supporting what's in the stipulation, but
5 from our perspective and the development of the
6 record in this case, we would rather have a thumbs up
7 or thumbs down from the Commission on a real record.
8 We don't want to be fighting over procedural issues,
9 we don't want to be --

10 EXAMINER PRICE: There will be a record
11 one way or the other.

12 MR. OLIKER: There will be a record, but
13 we don't want to be moving to strike portions of the
14 Staff Report based upon the record, we want the
15 Commission to issue a decision based upon real
16 evidence.

17 And we think there's a way to do that,
18 rather than talking about holes and what evidence
19 isn't in there, we'd like it to be a fully developed
20 record and allow the Commission to decide the issues,
21 and that's what we're trying to do, we're trying to
22 develop that and give the Commission an appropriate
23 record regarding this issue.

24 And again, as we mentioned earlier, we
25 would be -- we are hopeful -- we have always been

1 hopeful that we would not need to cross-examine
2 all 11 of these witnesses.

3 If the company would be willing to even
4 pick the witness they wanted to testify to support
5 the cost information in the C schedules, it could be
6 one or two witnesses, we would be more than willing
7 to proceed on that basis with the hope of working
8 toward developing a record for the Commission to act.

9 And the reason why we put in 11 people
10 is because of all the cross-references in testimony,
11 it's never been quite clear who was going to sponsor
12 certain --

13 EXAMINER PRICE: Why can't you ask these
14 questions of Mr. Bentley?

15 MR. OLIKER: We may be able to, your
16 Honor, but I don't think Mr. Bentley is going to be
17 able to speak to the cost of service study.
18 Mr. Parke might be able to, that's possible, I don't
19 know for sure.

20 And that's -- we have included the
21 expansive listing in an abundance of caution, because
22 as I'm sure your Honor is familiar with all his years
23 of experience, parties have from time to time played
24 what we call the shell game where they say I'm sorry,
25 you missed your chance, so-and-so knows the

1 information there, and I can't help you. And we're
2 just simply trying to avoid that type of situation.

3 It would be wonderful if we could talk
4 to two people and have a fully developed record, but
5 my experience is if you so limit yourself, that
6 doesn't happen.

7 EXAMINER PRICE: Okay. Thank you. At
8 this time we're going to go off the record briefly
9 while we consider what we have heard, and we will get
10 back to you in about 15 minutes. Let's go off the
11 record.

12 (Recess taken.)

13 EXAMINER PRICE: Please be seated.
14 Thank you. Let's go back on the record. I'd just
15 like to note for the record that the marketers are
16 seeking extraordinary relief at this point in the
17 process, and we have a company application, we have a
18 Staff Report that was carefully investigated and put
19 together, I'm sure, we have objections, we have Staff
20 testimony responding to those objections.

21 So I do think that this is an
22 extraordinary request, but under the specific facts
23 and circumstances under this case, we will grant in
24 part and deny in part the motion to quash.

25 The motion to quash will be denied with

1 respect to Nathan Parke, and will be granted with
2 respect to every other witness.

3 Mr. Smith does rely upon the information
4 he obtained by -- from Mr. Parke as part of the
5 conclusions of his Staff testimony. And although
6 it's clear he also relied in part on Mr. Chapman,
7 Mr. Chapman apparently did not review any of the
8 direct generation costs as part of the cost of
9 service, direct generation costs. In any event, it
10 would be outside the scope of this proceeding as this
11 is a distribution rate case.

12 So Mr. Smith does rely on Mr. Parke for
13 information related to indirect costs of providing
14 generation service which may be embedded in
15 distribution rates, the marketers should have a
16 chance to present Mr. Parke as a part of their case.
17 I assume they are going to call him as a hostile
18 witness on cross.

19 MR. PRITCHARD: Your Honor, I think I
20 wrote that down backwards.

21 EXAMINER PRICE: We denied the motion to
22 quash --

23 MR. PRITCHARD: Sorry.

24 EXAMINER PRICE: Just to make it very
25 clear, we denied the motion to quash with respect to

1 Mr. Parke. We granted it with respect to the
2 remaining ten witnesses.

3 I would also like to note that if
4 Mr. Parke defers excessively, or is unable to answer
5 questions and defers questions excessively to
6 Mr. Chapman, we'll revisit this ruling.

7 Finally, the -- Mr. Smith clearly relied
8 upon Mr. Parke with respect to the answers that are
9 contained in Staff Data Request 187, and Mr. -- and
10 marketers' questions to Mr. Parke will be confined to
11 the information set forth in Staff Data Request 187.

12 MR. OLIKER: Your Honor, if I may
13 clarify, are you referring to Mr. -- there are two
14 data requests here, 187 and 181. 181, I believe,
15 contains responses from both Mr. Chapman and
16 Mr. Bentley.

17 EXAMINER PRICE: Right. Mr. Bentley is
18 coming, Chapman is not going to be here.

19 MR. OLIKER: And I guess the question --
20 because there was some reference to Mr. Parke and
21 Mr. Chapman, and that is why Mr. Chapman was 181.

22 EXAMINER PRICE: Your questions are
23 confined to Mr. Parke in 187.

24 MR. OLIKER: Right. And that's why I
25 was trying to figure out Mr. Chapman's response

1 to 181, and I wasn't sure if you misspoke or if that
2 was your intention.

3 EXAMINER PRICE: Mr. Chapman is not
4 coming and you can't ask him questions about 181.
5 Mr. Parke will be here and you will be limited to
6 your questions to Staff Data Requests -- not just
7 solely those questions, but the information set forth
8 in Staff Data Request 187.

9 MR. OLIKER: I see. And so I
10 understand, to the extent that he doesn't answer this
11 content or says that it's responsible but for other
12 individuals, then we may revisit the --

13 EXAMINER PRICE: If he unduly defers to
14 Mr. Chapman, or any other witness.

15 MR. OLIKER: Thank you.

16 EXAMINER PRICE: Or any other witness.

17 MR. OLIKER: And that is helpful.

18 EXAMINER PRICE: Any other questions,
19 clarifications?

20 MR. SHARKEY: Nothing from the company,
21 your Honor.

22 EXAMINER PRICE: We would expect to hear
23 the marketers' witnesses after your two company
24 witnesses and Mr. Healey's OCC witness, but before
25 Staff witnesses. So if you can work with Mr. Olikier

1 for scheduling Mr. Parke for one of those days.

2 MR. SHARKEY: So sounds like late
3 Monday, early Tuesday. Tough for me to guess how
4 quickly things are going to go.

5 EXAMINER PRICE: Me, too. I mean,
6 it's -- I don't care where he goes amongst the
7 marketer witnesses. I don't know if Mr. Oliker and
8 Ms. Glover have an opinion, but you have three other
9 witnesses?

10 MR. OLIKER: One witness is mine, and
11 the other two are RESA.

12 EXAMINER PRICE: You should present him
13 with that group of three.

14 MR. SHARKEY: Your Honor, could I ask to
15 have Mr. Parke be called last just so we have time
16 for him to come and prepare and to meet with him and
17 such?

18 EXAMINER PRICE: Yes.

19 MR. OLIKER: I'm sorry.

20 MR. MC NAMEE: Last of the three -- last
21 of the four.

22 EXAMINER PRICE: Last of the four. And
23 if we fly through witnesses and you need a day,
24 that's fine, we will just take a day off.

25 MR. SHARKEY: Thank you, your Honor.

1 MR. OLIKER: Your Honor, it would be
2 maybe a good time for us to bring to your attention
3 some of the overlap between this case and the Duke
4 case, based upon NARUC occurring this week and
5 unavailability of certain Staff witnesses, the
6 Staff -- although we have had a lull and we have been
7 finishing early, the Staff has deferred two of the
8 important witnesses to next week, specifically
9 Mr. Smith, who is testifying in the Duke case, and
10 although on later content, and also Patrick Donlon,
11 so we will do our absolute best to be flexible and
12 work with the Bench, but it may be difficult to have
13 both of those cross-examinations going on at the same
14 time, and just as I'm sure Mr. Smith can't be in two
15 places at the same time.

16 EXAMINER PRICE: You can just dual
17 caption the hearing and do it all at one time. We
18 understand that we are -- we are double booked this
19 week -- or next week with Dayton and Duke, and we
20 will do our best to work around it, but there are no
21 guarantees. Do you know what days Donlon and Smith
22 are going next week?

23 MS. MOONEY: Smith is Monday.

24 MS. BOJKO: Donlon is Tuesday --

25 EXAMINER PRICE: Smith on Monday, Donlon

1 on Tuesday?

2 MR. OLIKER: Right.

3 THE EXAMINER: Let's go off the record
4 for a second.

5 (Discussion off the record.)

6 EXAMINER PRICE: Let's go back on the
7 record. At this time we are adjourned. We will
8 resume Monday at 10:00 in this hearing room. Just to
9 remind everybody, this is a very cramped hearing room
10 for -- let's go off the record. We're adjourned at
11 this time.

12 (Thereupon, the hearing was
13 adjourned at 3:12 p.m.)

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CERTIFICATE

I do hereby certify that the foregoing is a true and correct transcript of the proceedings taken by me in this matter on Thursday, July 19th 2018, and carefully compared with my original stenographic notes.

Valerie Grubaugh,
Registered Merit
Reporter and Notary Public
in and for the State of
Ohio.

My commission expires August 11, 2021.

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Case No(s). 15-1830-EL-AIR, 15-1831-EL-AAM, 15-1832-EL-ATA

Summary: Transcript in the matter of the Dayton Power and Light hearing held on 07/19/18 electronically filed by Mr. Ken Spencer on behalf of Armstrong & Okey, Inc. and Grubaugh, Valerie