BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of the Application of The Dayton Power and Light Company for Approval of its Electric Security Plan.	Case No. 16-395-EL-SSO
In the Matter of the Application of The Dayton Power and Light Company for Approval of Revised Tariffs.	Case No. 16-396-EL-ATA
In the Matter of the Application of The Dayton Power and Light Company for Approval of Certain Accounting Authority Pursuant to Ohio Rev. Code §4904.13.	Case No. 16-397-EL-AAM

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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-A, Columbus, Ohio, called at 10:05 a.m. on Monday, April 1, 2019.

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On behalf of IGS Energy.

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On behalf of the Staff of the PUCO.

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

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

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On behalf of Honda of America Manufacturing, Inc.

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Monday Morning Session,
April 1, 2019.

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EXAMINER PRICE: Let's go on the record.

Good morning. The Public Utilities Commission has set for hearing at this time and place Case No. 16-0395-EL-SSO, being in the Matter of the Application of The Dayton Power and Light Company for Approval of Its Electric Security Plan.

My name is Gregory Price. With me is Patricia Schabo. We are the Attorney Examiners assigned to preside over today's hearing.

Let's begin by taking appearances. Let's first note this is day six of our hearing proceeding, and we will begin by taking appearances starting with the Company.

MR. SHARKEY: Thank you, your Honor. Jeff Sharkey from the Faruki firm on behalf of The Dayton Power and Light Company. I also have with me my partner Jeff Ireland and Chris Hollon also from the Faruki firm. In addition, Mike Schuler, regulatory counsel for the Company, is here. Thank you.

EXAMINER PRICE: Thank you.

MR. McNAMEE: On behalf of the Staff of

the Public Utilities Commission of Ohio, I am Thomas W. McNamee, Assistant Attorney General. The address is 30 East Broad Street, Columbus, Ohio 43215.

MR. OLIKER: Good morning, your Honors. On behalf of IGS Energy, Joseph Oliker and Michael Nugent, 6100 Emerald Parkway, Dublin, Ohio 43016.

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

MR. PRITCHARD: On behalf of the IEU-Ohio, Matt Pritchard with the law firm McNees, Wallace & Nurick, 21 East State Street, Columbus, Ohio 43215.

MS. MOONEY: On behalf of the Ohio Partners for Affordable Energy, Colleen Mooney, Post Office Box 12451, Columbus, Ohio.

MR. MICHAEL: Good morning, your Honors. On behalf of DP&L's residential utility consumers, the Office of the Ohio Consumers' Counsel, Bill Michael.

MS. WHITFIELD: Good morning, your Honors. On behalf of the Kroger Company, Angela Paul Whitfield, the law firm Carpenter Lipps & Leland, 280 North High Street, Suite 1300, Columbus, Ohio 43215.

MS. BOJKO: Good morning, your Honors. On behalf of the Ohio Manufacturers' Association Energy Group, Kimberly W. Bojko and Brian W. Dressel with Carpenter Lipps & Leland, 280 North High Street, Suite 1300.

MR. ALEXANDER: Good morning. On behalf of the City of Dayton and Honda of America Manufacturing, Inc., Trevor Alexander with the firm Calfee, Halter & Griswold, 41 South High Street, Columbus, Ohio. Also appearing with me Christine Schwartz, regulatory counsel for Honda.

MR. BOEHM: Good morning, your Honor. Kurt Boehm appearing on behalf of the Ohio Energy Group, the law firm of Boehm, Kurtz & Lowry, 36 East Seventh Street, Cincinnati, Ohio 45202.

MS. FLEISHER: Madeline Fleisher, on behalf of the Ohio Environmental Law & Policy Center, 21 West Broad Street, 8th Floor, Columbus, Ohio 43215.

MS. GRUNDMANN: Good morning. It is Carrie Grundmann here with Spilman, Thomas & Battle, on behalf of Wal-mart Inc., 110 Oakwood Drive, Suite 500, Winston-Salem, 27103.

EXAMINER PRICE: Thank you. There are additional seats on the counsel benches if you want to, care to move.

MS. GRUNDMANN: I'm good right here.

EXAMINER PRICE: Well, pursuant to our off the record conversation, at this time we will call -- recall Mr. Malinak to the stand.

(Witness sworn.)

EXAMINER PRICE: Thank you.

Mr. Oliker, please proceed.

Please turn on your microphone, Mr. Malinak.

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ROBERT J. MALINAK

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

CROSS-EXAMINATION

By Mr. Oliker:

Q. Good morning, Mr. Malinak.

A. Good morning.

Q. My name is Joe Oliker, and I represent IGS Energy. Regarding your testimony, am I correct you do not have any formal training in utility ratemaking?

A. I don't.

Q. Rather you learned about the ratemaking process informally while working at Putnam Hayes, correct?

A. It was kind of a combination. I mean, how do you define formal? There were a couple of in-house seminars on it and but most of my training is on the job.

Q. For example, you didn't take any educational classes in utility ratemaking?

A. Again, not formal outside of my firm.

Q. Okay. And most of your training, I think you just mentioned, is through working on matters such as this case?

A. A number of matters that are very similar to this. I probably worked on maybe a dozen rate-related cases over the course of my career. And -- and in this case, I think maybe there's a bit more focus on the financials of the Company.

Q. And the only cases -- sorry. Let me restate that.

The only utility cases you have provided testimony in are cases related to The Dayton Power and Light Company.

A. Yes, that's correct, me as the witness, that's correct.

Q. And you can't recall all the titles of any specific textbooks or treatises on utility ratemaking; is that correct?

A. Well, I mean, I learned one or two authors in my deposition.

Q. Do you recall their names?

A. I think Bonbright was one. I think Lesser was another.

Q. But you don't recall reading the textbooks that Mr. Bonbright and Dr. Lesser authored, correct?

A. Not specifically, no.

Q. And you also don't recall reading Alfred Kahn's "Economics of Regulation"?

A. Not specifically, no.

Q. But you are familiar with the regulatory compact, correct?

A. At a general and economic level, yeah.

Q. And let me know if you agree with the following very high level summary of the regulatory compact. Would you agree under the regulatory compact the regulator grants the company a protective monopoly, essentially a franchise, for the sale and distribution of electricity to customers in its defined service territory. In return the company commits to supply the full quantities demanded by those customers at a price calculated to cover all operating costs plus a reasonable return on the capital invested in the enterprise?

A. I mean, that sounds like a pretty good general description of at least part of the regulatory compact. I didn't hear it in -- I guess you said at a rate of return that is -- did you say a reasonable rate of return?

Q. I did.

A. Okay. You know, I would change that a little bit to say a rate of return that is equal -- that compensates investors for the risks they bore, that they are bearing in the process, so reasonable is kind of a vague term.

Q. Okay. And you agree that the regulatory compact assumes that invested capital is sourced from equity and debt holders?

A. In general, yes. There's also preferred equity which is kind of a hybrid.

Q. And you agree that one of the goals of economic regulation is to mimic a market outcome when the underlying fundamentals are not competitive?

A. I mean, that's one -- that's one of the -- that's a primary goal. I mean, sometimes regula -- regulation has other goals and -- that are to serve the public interest in other ways. For example, in this case you have grid modernization as being a goal that might -- that one might seek that serves the public good, and it's, you know, not necessarily directly related to trying to get rates that have -- that are mimicking what the market would do. I mean.

Q. And from a ratemaking perspective, you're familiar with the -- the term allowance for funds used during construction, correct?

A. Generally, yes.

Q. Can you describe what it is?

A. You know, when a company or when a utility is building some infrastructure, a plant, whatever, typically, or a lot of times, you know, the rate system is set up so that the capital does not go into rate base until the equipment or the infrastructure is put into service. And so but during that -- during the time when the plant is being constructed, the Company is, in effect, incurring capital costs, think of it almost as working capital costs and so if UDC is designed to compensate them for, you know, in the interim period before the plant is put into service.

Q. And you are not familiar with how an allowance for funds used during construction may affect the rate base in the rate of return calculation.

A. Not specifically, no, with that detail.

Q. Okay. And you're familiar with accumulated deferred income taxes, otherwise known as ADIT, correct?

A. Generally, yes.

Q. And ADIT relates to the timing difference between book and tax accounting, correct?

A. Generally, yes.

Q. And in the short-term ADIT increases cash flow, right?

A. Well, I wouldn't say ADIT does it. It's the fact that you have an accelerated depreciation which allows for a larger tax deduction which means that your after-tax cash flows are higher than they would be than if you had a straight line depreciation, for example; and the difference between those two is what gets accounted for as ADIT.

Q. And you do not know whether ADIT is applied as an offset to the rate base in the rate of return calculation, correct?

A. I think that it is -- I know that it goes into the ratemaking process, and I don't remember exactly how it's involved.

Q. Okay. And we touched on this a little bit earlier, but you agree that the concept of rate of return is part of the regulatory compact?

A. Yes. Setting a rate of return that is commensurate with the risks that are being borne by the investors is part of the deal.

Q. And the concept of a rate of return is a traditional type of economic regulation that is existed for many years, perhaps 100 or more?

A. It's been around a long time.

Q. Okay. And the idea in the rate making process is that you get a return of your capital through depreciation, but you also get a return on your investment which is the rate of return multiplied by the net invested capital, right?

A. Yeah. We are net invested capital, your net of accumulated depreciation, so it's a return of and on invested capital.

Q. Okay. And earlier I think we mentioned this, there are debt and equity components of the rate of return calculation?

A. Typically, yes. I mean, I don't know if I have ever seen a utility that didn't have some debt.

Q. And in the rate of return calculation, what you do is you take a weighted average of the debt and equity and you apply that to the net rate base to determine an appropriate return, correct?

A. Yes. That's an important element of it. It's a -- the weighted average that you take is often of a target capital structure as opposed to an actual capital structure.

Q. You've never testified in a distribution rate case, correct?

A. That's correct.

Q. And the concept of the rate of return revolves around the fact that in order to fund rate base expenditures, the utility had to access the capital markets either from shareholders' equity or through some form of debt, correct?

A. Yeah. The idea is to set the rate of return so that investors will supply their capital, but you left out preferred stock again. Sometimes there's preferred stock.

Q. Okay. And you agree there are different interest rates for debt and equity?

A. I wouldn't put it that way. There are different rates of return.

Q. Okay. And there are different rates of return because equity holders are entitled to the cash flows that are left over after the payment of debt, so debt holders are higher in the payment priority than equity holders which results in lower risks to the debt holder, correct?

A. I believe there are a lot of things that go into what determines the right rate of turn on equity and the right rate of return on debt. One of them is that the equity is -- is after -- it's a residual claim. It comes after you have to pay debt holders, so it's generally riskier for that reason which is increased financial risk but there's -- I'll leave her there.

Q. And because of the increased risk for equity holders, that's why the interest rate that you apply for equity is usually higher than debt?

A. I wouldn't use the term interest rate. The rate of return on equity is typically higher than the interest rate on debt.

Q. Thank you for that clarification. And in the rate of return calculation, earnings related to equity investment have to be grossed up to account for the fact that equity returns are taxed by the federal government, correct?

A. Yeah. The goal is for the investors to be made whole after this action, so I think that's right. I think there's a gross-up factor that's applied so that on an after-tax basis, investors are getting the returns they expect.

Q. And we call the gross up the gross revenue conversion factor, right?

A. I don't know what -- I don't know what you mean by "we," but you could call that -- you could call it something like that if you wanted to.

Q. Okay. But unlike equity, the interest a utility pays on long-term debt is deductible as an expense for economic tax purposes, correct?

A. Yeah, that's correct as a general matter.

Q. Okay. And you agree that DP&L has distribution riders, right?

A. Yeah, that's my understanding.

Q. And the extent that those distribution riders recover capital investment, they include a rate of return, correct?

A. Yeah. My understanding is they're like any other, you know, similar type of rider where there is a return of an on capital included.

Q. And are you familiar with the DIR?

A. The Distribution Investment Rider?

Q. Yes.
A. Okay. In general, yes.
Q. Okay. Are you okay if we call that the DIR?
A. I am.
Q. Would you agree that the DIR recovers capital investment?
A. My understanding is that it is designed to cover -- to collect distribution investments that I guess qualify, qualifying distribution investments, in between rate cases.
Q. And by qualifying distribution investments, you mean capital investments, correct?
A. My understanding that is a component.
Q. Okay. And, therefore, the DIR will include a return of and return on capital investment?
A. That's my general understanding.
Q. And you have submitted financial projections in this case, correct?
A. Yeah. I have submitted an analysis that relies on a set of financial projections that were provided to me by the company. I've made certain adjustments to them to conform to the type of analysis I was doing.
Q. Okay. And for purposes of your analysis,

you have modeled no impact one way or another from the DIR, correct? It simply is zero?

A. It's been set at zero in my Amended Stipulation model and testimony.

Q. Thank you. And you're aware that DP&L has subsequent to the filing of your testimony entered into a Stipulation and Recommendation in its distribution rate case?

A. That's my general understanding, yes.

Q. And you do not know the weighted average cost of capital that was authorized in the distribution rate case in accordance with that Stipulation and Recommendation, correct?

A. That's correct. I remember seeing a return on equity number close to 10 percent but that's all I remember.

Q. Okay. And you do not know whether DP&L's actual weighted cost of capital is different than what was authorized in the distribution rate case.

A. What do you mean by "actual"?

Q. Do you know if DP&L's actual weighted average debt and equity is the same proportion as what was contemplated in the distribution rate case?

A. What do you mean by "actual"?

Q. Well, do you know what level of debt DP&L

said it had in the distribution rate case?

A. Not in the -- specifically in that rate case.

Q. And do you know what level of debt the Stipulation assumed DP&L had in the distribution rate case?

A. I don't.

Q. Well, you don't know the level of debt that DP&L said it had. How would you know whether the same amounts were considered in this case?

A. Could you ask that again?

Q. I'm sorry. I am not trying to be argumentative here. At the end of 2016, would you agree that DP&L had somewhere in the range of $745 million of long-term debt according to its SEC filings?

A. Do you have an SEC filing to put in front of me?

Q. I do not. We may be able to come back to that later if you need one. And I will remind you to be careful for what is in your testimony, Mr. Malinak, because many of the numbers are confidential including the debt numbers. I believe that they may be as well.

A. Oh, really? Okay.

MR. SHARKEY: I would suggest, your Honor, I have got a copy of the public version, so before Mr. Malinak answers questions, maybe he could tell me where he is going to be answering questions from, and I could let him know.

MR. OLIKER: Could we go off the record for a second?

EXAMINER PRICE: Yes.

(Discussion off the record.)

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

Q. (By Mr. Oliker) Mr. Malinak, in your testimony is the long-term debt of DP&L -- actually that may be -- is that a public number?

A. I am looking at my exhibit, and it's redacted. That's where I was going to look for it.

Q. Do you have a general idea of DP&L's long-term debt in the end of 2016? That would be a public number filed with the SEC, correct?

A. I have a pretty general idea of it, yes.

Q. And would you agree, subject to check, it was somewhere in the range of $744 million?

MR. SHARKEY: I am going to object, your Honor. It is not clear to me what "subject to check" means.

EXAMINER PRICE: I've always wondered that myself. We are not coming back.

MR. SHARKEY: I'm sorry?

EXAMINER PRICE: We are not coming back. Your objection is sustained.

Q. (By Mr. Oliker) Well, what was the general number that you believe it was?

A. Again, this is -- I looked at my confidential testimony to refresh my memory.

THE WITNESS: Can I answer this question?

MR. SHARKEY: Level of debt at the end of 2016 is a public number, your Honor, so we don't have any objection.

MR. OLIKER: The numbers in his testimony would be based off -- I don't mean to step on the witness -- Craig Jackson's information, which would have existed in October of 2016, and that's, I believe, why it was confidential.

EXAMINER PRICE: I think Mr. Sharkey is saying that they are comfortable with this number coming on the record.

Q. (By Mr. Oliker) Okay.

A. It's in that range of mid 700 millions.

Q. Thank you. And DP&L's equitable capitalization at the end of 2016 was in the range of

360 million, correct?

A. That I cannot -- I don't remember. You are talking about December 2016?

Q. Yes.

A. When I did my Amended Stipulation testimony, we were working off of the 10-Q the third quarter of 2016, so I don't have that number in front of me.

Q. Do you have -- I'm sorry. Do you have the 10-Q number in front of you?

A. I don't.

Q. Do you remember what it was?

A. I don't. Oh, I'm sorry, the 10-Q number, I do have a general number about that.

Q. And the 10-Q number was public, correct?

A. Yes, it would be.

Q. What was that number?

A. The number is around 500 million, plus or minus. And, again, that's subject to my memory which is not as good as it used to be.

Q. And 500 million to 750 million, that's not a 50/50 capital structure, is it?

A. It is not a 50/50 book capital structure, no.

Q. It's closer to 60/40? 66/33?

A. It's heavier towards debt. Yeah, in that range probably.

Q. And if the distribution rate case authorized a 52 percent debt structure and 48 percent equity structure, you would agree that the rate case provided a hypothetical capital structure that was more weighted towards equity than reality would suggest?

A. I would not agree with that statement. It depends a little bit on what you mean by reality.

Q. Okay. Then let me say it this way, you would agree if the distribution rate case authorized 52 percent debt and 48 percent equity capital structure and DP&L happened to have $750 million of debt and 500 million or less in equity, the capital structure authorized in the distribution rate case was different than DP&L's actual capital structure?

A. What do you mean by "actual"?

Q. The amount of debt and equity that existed on the books of DP&L.

A. So their book -- their book --

Q. Yes.

A. Yeah, the 52/48 would be different than their book capital at the end of -- around the end of 2016.

Q. Okay. Thank you. And if a utility is permitted to earn a rate of return based upon a target capital structure which is more weighted to equity than is actually on the books of the Company, would you agree that may permit the utility to return a rate of return that is higher than its actual cost of capital?

A. No, not necessarily.

Q. Mathematically speaking if a utility has an actual capital structure of 35 percent equity and 65 percent debt and the utility is permitted to earn a rate of return as if they had 48 percent equity and 52 percent debt, would you agree that the target capital structure with the 48/52 will produce a higher revenue requirement?

EXAMINER PRICE: Could you restate your question, Mr. Oliker?

MR. OLIKER: Sure.

Q. (By Mr. Oliker) If a utility on its books has 35 percent equity and 65 percent debt but they are permitted to recover a rate of return of 48 percent equity and 52 percent debt, all else equal, under the situation with a 48 percent equity capital structure, would you agree it's going to result in a higher revenue requirement?

A. A higher revenue requirement than what?
Q. A higher total number if you apply it to a rate base, all else being equal.
A. No, not necessarily. I mean, you said mathematically?
Q. Mathematically, just math -- that's the way the math works out, right?
A. Let me try to restate it. So if you -- if you have a utility that has a -- that has departed from its target capital structure so it has a 30/70 equity-to-debt percentage, okay, and you keep the rates -- rates of return on those, you know, mathematically, if you apply -- if you apply a weighted average cost to capital that's 50/50 versus if you applied a weighted average cost to capital at 30/70 and kept the rates exactly the same, okay, which wouldn't make sense, but if you did that, then you would have -- mathematically there would be a different rate of return if you did that.
Q. I think you may have not understood my hypothetical, so I will try to do it differently.
A. Okay.
Q. If the Commission in the distribution rate case permitted DP&L to have a target capital structure of 48 percent equity and 52 percent debt,

if DP&L's actual equity structure at the time was about 35 percent equity and 65 percent debt, would you agree that the capital structure adopted by the Commission would produce a higher revenue requirement than if the Commission had used the actual capital structure?

A. Okay. And by "actual" you're talking about the actual book capital structure.

Q. Yep.

A. Mathematically I think that would work --

Q. Okay. Thank you.

A. -- work that way.

Q. And --

A. Assuming you kept the rates exactly the same which wouldn't make sense but.

Q. And in that hypothetical situation that we've just been addressing with 35 percent equity versus the 48 percent that's authorized, would you agree for that difference between the 35 percent and the 48 percent, you would still be applying the gross revenue conversion factor although there is no equity earnings?

A. What do you mean by "although there is no equity earnings"?

Q. If the actual capital structure is 35 percent and it's been authorized that the utility can earn 48 percent, would you agree that there is an assumption that there will be equity returns when, in fact, there are not for at least the difference between 35 and 48 percent?

A. And we are in this hypothetical where you have a target capital structure with a set of rates that are -- that are joined at the hip to that target that's now differing from the actual capital structure of the company, okay, by this amount, then mathematically for some -- I don't know, some period of time what you are describing could take place.

Q. And just for the record, what do you mean by "rates"? Are you assuming that the --

A. The rates of return.

Q. The rates of return.

A. Yeah, because you have different rates of return that apply to equity when it's 35 percent versus 50 percent.

Q. Okay.

A. Economically you should, all else equal.

Q. And credit rating agencies look at authorized rates of return, correct?

A. Yeah, that's one of many factors that they -- they examine.

Q. And it wouldn't surprise you if banks looked at authorized rates of return as well.

A. I mean, I think banks, that might be something -- what they are looking at is total cash flow so they care about, you know, everything that goes into producing the total cash flow for a company. That's revenues. It's costs. It's capital expenditure requirements to maintain the levels of service and that go into rates. So I think it probably would be a secondary factor probably for both rating agencies and banks.

MR. OLIKER: And, your Honor, typically I understand you do give witnesses one freebie, but I would move to strike all of the rest of his answer which was not related to my question.

EXAMINER PRICE: Overruled.

You are not using your freebie either. I am strictly denying his motion to strike. I don't like the term freebie. I like to think of it more as a warning but.

Q. (By Mr. Oliker) Your testimony discusses the debt obligation of both DP&L and DPL Inc., correct?

A. Yeah. There is debt that's denominated, if you will, at -- under the -- both organizations but, yes, I look at all the debt of the combined entities.

Q. Okay. And in your testimony am I correct that whenever you use the word "companies," you are referring to both DP&L and DPL Inc.?

A. I think that's the terminology that I used to try to distinguish when we were -- Inc., DPL Inc. is kind of like the Companies because DP&L is consolidated into Inc., and it's mostly what Inc. is.

Q. Would you agree there is a difference between secured debt and unsecured debt, correct?

A. Yes.

Q. What is your definition of unsecured debt?

A. Unsecured debt is -- is still debt like secured debt except that there are no specific assets that are pledged to support it. It's sort of the full faith and credit of the company leaving aside any pre -- any assets that are already part of a secured debt deal, so it would be whatever is left over.

Q. And to your knowledge, all of the debt at DPL Inc. is unsecured, correct?

A. To my knowledge, the lion share, I think, is seen as unsecured. I can look at my exhibit. I have an exhibit on it, if that would help, but that's my recollection.

Q. If you need to refresh your recollection, that's fine. Maybe you could help us of where you are looking at, Mr. Malinak.

A. Yeah. I am looking in Exhibit 19A and there is also a 19B. These are outstanding debt as of September 30 and this is all -- I got it from my internal data, but I think it's probably public but. My recollection is that if you look at the 2019 and 2021 bonds, that those are -- that those are senior unsecured.

Q. And am I correct that when DPL Inc. entered into its unsecured debt, DP&L was not a party to that transaction; for example, DP&L didn't sign.

A. I don't actually know that.

Q. Okay. And you do not know whether DP&L's assets were set forth as collateral for DPL Inc. in any of its unsecured debts?

A. I was a little unclear what you mean by "assets," but DP&L's cash flows are really the source of payment for the combined entities' debt including DPL's denominated debt, so the cash flows come from their assets.

MR. OLIKER: May I approach, your Honor?

EXAMINER PRICE: You may.

Q. Mr. Malinak, the document I just presented you is your deposition transcript. Were you deposed in this matter on March 13?

A. I think so, if that was the day. This looks like it, yeah.

Q. And did you have an opportunity to review that deposition transcript?

A. I did.

Q. And the document that's been put in front of you is your deposition transcript, is it not?

A. It looks like it.

Q. And can you turn to page 66. And let me know when you are there.

A. I am there.

Q. And did I ask you, this is on line 5, "So were DP&L's assets provided as collateral to the DPL, Inc., debt, if you know?

"Answer: I don't know specifically what the loan agreement set forth in that regard." Did I read that correctly?

A. Yes.

Q. Thank you. And a portion of DP&L's debt is secured, correct?

A. That's my recollection, yes.

Q. And you agree that secured debt is viewed as lower risk than unsecured debt?
A. Generally it is, yes. It depends on the type of collateral and so forth, but as a general matter, all else equal, it is.
Q. And that is because the secured debt is actually secured by specific collateral so in the case of bankruptcy the lender would have specific assets that it could turn to to recover its investment.
A. Yes. As a general matter, as long as a collateral has maintained its value, it -- secured debt would be lower risk, and creditors can get their money back better.
Q. And you don't know which of DP&L's assets provide security for DP&L's debt, correct?
A. I haven't looked at the specific assets, no.
Q. And I think you mentioned this earlier, that the mathematical calculations you've provided in your testimony were derived from another set of foundational analysis that was performed by DP&L, correct?
A. Yeah. They provided a set of spreadsheets that fed into my model, the numbers from

it fed in.
Q. And those spreadsheets were financial projections which included projected net income, cash flow, and balance sheets for DP&L and DPL Inc.?
A. Yes. It was a pretty complete set of projections, balance sheets, cash flows, income statements, tax assumptions, things like that.
Q. And at the time you drafted your testimony, DP&L owned generation assets but had planned to transfer them, correct?
A. That's my understanding is they were -- that was the plan.
Q. But the calculations in your testimony assumed that DP&L still owns generation assets for the duration of the ESP period, correct?
A. Yeah, that's correct. There had been no separation or had been no sale of generation assets, so we went with the model we had at the time.
Q. And you can't recall whether an earlier case involving DP&L may have also planned for it to transfer its generation assets; is that correct?
A. Earlier case.
Q. An earlier proceeding.
A. And by "planned," what do you mean exactly?

Q. Do you know whether there was an earlier Commission order that had required DP&L to transfer its generation assets in another case you testified in?

A. I have a general recollection that that was the case.

Q. Okay. And am I correct that your testimony does not provide any projections of DP&L's financial well-being as an entity that owns solely distribution and transmission assets, correct?

A. Right. We are talking about my Amended Stipulation testimony obviously but, yes, that's correct. My projections are all generation is included.

Q. Okay. In your financial projections, when you refer to cash flows, am I correct you are mainly focused on the following items: Net income, depreciation, and capital expenditures?

A. When I am doing cash flows --

Q. Well, maybe I can restate the question.

A. Yeah.

Q. Okay. You talk about funds from operations, correct?

A. I do.

Q. And funds from operations are typically net income plus depreciation and maybe some other smaller items, correct?

A. Are you talking about preworking capital or post-working capital?

Q. Can you clarify the difference?

A. Yeah. So the rating agencies look at cash flow or funds from operations, sometimes they call it both, a lot of times preworking capital adjustments because working capital adjustments will -- should over time kind of even out a bit, so they ignore those. Those can create noise in the cash flow measures, so I take a look at cash flow preworking capital.

Q. Which is net income plus depreciation, correct? Maybe amortization?

A. That's -- that's a big chunk of it, yeah.

Q. And because, I think, as you mentioned, working capital is largely the timing differences perhaps between payables and receivables?

A. Yeah, that kind of thing.

Q. Okay. And am I correct that around the time you prepared your testimony, DP&L had incurred a significant economic impairment of its generation assets, which I believe is a public number in your testimony?

A. They had -- they had recently recognized a significant impairment at the time of the testimony. I can't remember the exact timing of it.

Q. And when an economic impairment is incurred, there has to be a filing with the SEC, correct?

A. You mean like an 8-K?

Q. Yes.

A. I don't know the exact rules, but I wouldn't be surprised.

Q. And do you know whether -- how big was the economic impairment that DP&L incurred in 2016?

A. I don't remember the exact number. Do you want me to check in my testimony? I think it's in here somewhere.

Q. Yeah. That would be very helpful. Thank you.

A. And you are asking me specifically about the impairment that was taken towards the end of 2016?

Q. Yes.

A. In the interest of time, I am going to go just to my exhibits. So if you go to Exhibit -- Exhibits 6 and 7, look at line 8, okay, there is an asset impairment charge and prior impairment of

584 million.

MR. SHARKEY: Your Honor, those numbers --

THE WITNESS: I think that's public.

MR. SHARKEY: The prior has it wouldn't be public, so it is redacted in here but go ahead.

Q. Actually I may have found a better place. Could you go to page 54 -- 53 actually.

A. You know my testimony better than I do.

Q. In the public version I think it may identify the impairments in footnote 63; is that correct?

THE WITNESS: That's unredacted? So unredacted?

MR. SHARKEY: Correct.

A. Okay. Yeah, so it says here we assumed 910 million at one point. There is also 1.354 billion as of December 31, 2016.

Q. And do you know if those amounts are limited to DP&L, or do they include DPL Inc. impairments as well?

MR. SHARKEY: I caution Mr. Malinak the text in lines 1 through 16 was redacted.

THE WITNESS: Oh, really?

A. Could you repeat the question or reread the question, please?

Q. Yes. Do you know whether the economic impairments identified in footnote I believe 63 include DPL Inc. and DP&L?

A. My general recollection is that they do include -- there is impairment at both -- at both of those entities, but as I sit here today, without looking at the 10-K page, I can't know for sure.

MR. OLIKER: Can we go off the record for a second?

EXAMINER PRICE: We may.

(Discussion off the record.)

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

Q. (By Mr. Oliker) Mr. Malinak, you agree that an economic impairment is the reduction of the book value of an asset to reflect its true market value or fair market value, I suppose?

A. That's the -- generally the source of impairment charges, yeah.

Q. And when the value of an asset is written down, would you agree the amount of the write-down must be subtracted from shareholders equity in the balance sheet on a dollar-for-dollar basis?

A. That would typically be the case. Those chargeoffs would often be run through the income statement and end up affecting equity.

Q. And an economic impairment results in a one-time reduction in income, correct?

A. It certainly results in a reduction in the period that it's taken, and my hesitation is just not knowing how the accounting works going forward from there but, yeah.

Q. Fair enough. Because an economic impairment can produce net income, you agree it can also reduce federal income taxes, all else being equal?

A. That's certainly possible. Tax -- taxes are super complicated and there can be NOLs. The Company's tax situation could be -- the tax books can be very -- very different, and so it certainly is unlikely to increase taxes.

Q. And an economic impairment is a noncash item, correct?

A. That is generally true, yes.

Q. And all else being equal, if cash flows stayed the same and income taxes go down, you agree that an economic impairment can result in a net increase of cash flows in the short term?

A. Can I just ask you very quickly when you say "income taxes," are you talking about cash taxes or tax expense?

Q. Speaking --

A. Because I was answering assuming you were talking about cash taxes.

Q. I am speaking of federal income taxes paid to the government.

A. Cash.

Q. Yes.

A. If it's paid, it would be cash. Yeah, it's possible that you could get a cash benefit, but it's -- it's complicated. I mean, the Company's tax books are very different from their financial books.

Q. And your testimony discusses credit rating agencies, correct?

A. It does.

Q. You have never worked for a credit rating agency, correct?

A. Yeah, not as an employee. I may have had one case a long time ago where I was hired as a consultant.

Q. And you agree that credit rating agencies look at independent power producers differently than regulated distribution utilities?

A. What do you mean by "look at" exactly?

Q. Could you turn to page 128 of your deposition.
A. Yes, I'm there.
Q. And on line 19 were you asked the question "And would you agree that credit rating agencies look at independent power producers differently than regulated distribution utilities that do not own generation assets?"
A. I'm sorry. Where is that?
Q. On page 128, line 19. "Answer: Yes, they do look at them differently."
A. Okay.
Q. Did I read that correctly?
A. You did.
Q. And that is because regulated transmission and distribution companies are less risky than an independent merchant power company?
A. Yeah. Treating the words look at in terms of analyze and incorporate into their work, you know, an independent merchant power company would be -- they would analyze them differently.
Q. Okay. And that is because when there is a reduction in earnings for a regulated distribution or transmission utility, if they believe they are not earning their authorized rate of return, they can

simply file an application to increase their rates, correct?

A. That's one of the reasons, yeah. And then there's also just the fact that it's a lower risk business overall and the revenue stream is more assured more generally.

Q. And I think you just alluded to this, distribution and transmission utilities are also less risky because the market for their services is fairly fixed; in other words, they have a monopoly over certain aspects of their services?

A. Yeah. In comparison to a merchant power plant, their revenue stream -- their -- the demand is set by -- by the regulatory system, so they are less risky in that regard, but they can be more risky if there is regulatory risk, for example.

Q. Have you ever played the Monopoly game?

A. You mean the original Milton Bradley?

Q. Yes.

A. Of course.

Q. Even in the Monopoly game wasn't the utility the lowest earning and least risky of all of the monopolies?

A. I don't -- I think it might have been the railroads, but I can't -- I can't recall.

EXAMINER PRICE: We'll take administrative notice the railroads do earn more than the utilities if you happen to play Monopoly.

Q. And am I correct you do not know whether DP&L has a Lost Distribution Revenue Recovery Rider?

A. Yeah. I'm not familiar with that exact rider.

Q. Well, do you know if DP&L has a mechanism to recover revenues that may be reduced from energy efficiency measures?

A. I am not familiar with that exact rider.

Q. But if DP&L did have a rider to recover lost distribution revenues, that would make DP&L less risky, correct?

A. As a general matter, if there is a rider in place that allows them to kind of true up their revenue where they avoid fluctuations, downward fluctuations, I mean, I don't know if the rider also comes into play if they -- if revenues are higher than expected, so I don't know if it goes both ways. But if it's a rider that allows for recovery, if revenues fall short and they are able to do that in between rate cases, then that would help reduce the fluctuations in their revenue.

Q. Because in that instance they are less

subject to volume risk, correct?
A. Yes, yeah. In general, yes.
Q. And you do not know whether DP&L has any form of a decoupling rider, correct?
A. You know, I've seen the word decoupling in various documents, but I don't -- I am not familiar with that rider.
Q. And generally speaking is the concept of decoupling to reduce or break the connection between the revenue requirement and the total amount of throughput?
A. I don't know specifically, but it sounds like that is a potential interpretation of that -- what decoupling is meant -- what is meant by decoupling.
Q. And if DP&L had a decoupling rider, that would make it less risky, correct?
A. I would want to look at the rider and how it works before I could answer that.
Q. And by that you would want to look at the rider to see if it insulated DP&L from fluctuations in the total amount of throughput in its system?
A. Or from anything, but yeah.
Q. Okay. Would you agree that if DP&L had both a Decoupling Rider and a Lost Distribution

Revenue Rider, those riders would have the potential to make DP&L less risky if structured correctly?

A. I am not sure what you mean by "structured correctly," but if they are structured in such a way that they reduce fluctuations in revenues from what they would be without the riders, then, you know, by definition they will be resulting in a lower risk entity, but I would have to take a look at them and think about it to know for sure.

Q. And you would agree that riders that permit the utility to invest and recover a return on that investment outside of a rate case also reduces the risk for a utility?

A. All else equal, those kinds of riders are good both for the utility and for customers because they -- they allow sort of a real-time recovery which is just more efficient generally.

Q. And such capital investment riders can increase cash flow, right? All else being equal.

A. You took the words out of my mouth. Relative to the situation where the utility would have to sort of just collect AFUDC for a while before they finally put the plant -- plant in service so there was regulatory lag relative to that situation, those types of riders can result in, you know, cash flows coming into the utility sooner than they would otherwise.

Q. In that statement you referred to AFUDC. You were considering AFUDC as an accounting mechanism rather than a rate recovery mechanism, correct?

A. When I was thinking of AFUDC, I was thinking of it as something that compensates the Company for the cost of its capital that is -- that is accumulating over time. I frankly did not make an assumption whether it was a cash flow or an accounting adjustment. I think I said I wasn't sure -- I can't remember exactly how it works in a ratemaking context.

Q. Okay. And going back to an independent power producer, they are subject to a variety of risks that -- that do not impact regulated distribution and transmission utilities, correct?

A. They have a different set of risks, that's correct.

Q. Okay. And all else being equal, a regulated utility and an independent power producer with the exact same financial metrics, the independent power producer would receive a lower credit rating.

A. It would depend. I mean, it would depend on whether the utility was in a place that had a high degree of regulatory risk which investors would weigh against the other risks, but, you know, if your whole regulatory risk is constant, then -- then, all else equal, they -- the IPP would be considered a riskier business.

Q. And don't want to talk about the actual numbers because they are confidential in your exhibits, but you agree that if we were to compare the needed debt-to-capital and debt-to-EBITA ratios in order to obtain the same level of credit rating as a regulated utility, an independent power producer would have more robust ratios, correct?

A. Yes, again, subject to the caveat about regulatory risk in a particular setting. You know, just in general, the IPP business would be considered a riskier and, therefore, the ratio -- the ranges of ratios that, you know, that the rating agencies applied would be different.

Q. And I don't want to talk about the numbers again, but you've provided some calculations of potential Moody's ratings without the DMR in the Reconciliation Rider in RJM-4, correct?

A. Yes. I've calculated something that I've referred to as an indicated rating based on the quantitative factors.

Q. And RJM-4 you employ Moody's regulated and unregulated ratings for DP&L, correct?

A. Yes.

Q. And for credit rating purposes you would classify a regulated utility as a utility that does not own generation, correct? Or, in other words, a utility that simply owns transmission and distribution assets?

A. You know, the distinction on -- that I make is a little broader than that because RJM-4 is without the DMR and Reconciliation Rider, so one of the considerations is the fact that -- is the generation issue, okay? But the other consideration is that without the DMR and Reconciliation Rider, DP&L's -- DP&L's results may be closer to an unregulated results. They are -- certainly with it their revenues would be steadier and even more leaning towards the regulated numbers. So, for example, in the with DMR scenario for DP&L, which is RJM-5, I drop the unregulated grid all together for that reason.

MR. OLIKER: Can I have my question two questions ago, which I do think he answered, and then I had a follow-up question? Can I have both questions and answers read back, please, Karen.

(Record read.)

Q. And, Mr. Malinak, you would agree that if a utility owned just transmission and distribution, you would either use the standard Moody's regulated grid or the low business risk standard grid?

A. Yes, as a general matter.

Q. Okay.

A. Those are both regulated grids for standard and low risk.

Q. Okay. And now that DP&L has transferred its generating assets, you would consider DP&L a regulated utility in Moody's eyes?

A. Yes, especially given that the Amended Stipulation was approved and they are collecting the DMR as well, for both of those reasons. At least from a rating analysis standpoint, one would use a regulated grid only.

Q. And within your deposition you gave that same answer without the DMR; is that correct?

A. Yeah, it's possible. It may have been an oversight.

Q. And turning to page 34 --

A. Of my depo or Amended Stip testimony?

Q. Of your testimony.

A. I am there.

Q. Okay. Now, on page 34 and 35, we have two tables, and these tables are described in the proceeding pages of your testimony, correct?

A. Yeah. I wouldn't call them tables. They are charts.

Q. Okay. Thank you for that clarification. Let's just call them figures because they are labeled Figures 4 and 5.

A. Sounds good.

Q. And this information was collected for the calendar year 2014 and 2015, correct?

A. That's the focus, yeah.

Q. Am I correct that by this -- these figures you conclude that higher capital expenditures per megawatt-hour should be considered as a sign of the ability to maintain reliable service?

A. Yeah. All else equal, more capital expenditures should be associated with better service.

Q. You are familiar with the terms CAIDI and SAIFI; is that correct?

A. Just generally.

Q. Could you give definitions for CAIDI and SAIFI.

A. My general understanding is they are measures of the number of outages and I think maybe the length of outages and I don't know which one is which and then just generally speaking that's my understanding.

Q. You did not look at the CAIDI or SAIFI ratings of any of the utilities you list on Figures 4 and 5; is that correct?

A. Yes, not specifically.

Q. And the source of the information on this list for the credit ratings was taken from Moody's, correct?

A. Yes.

Q. And there are three utilities listed as Baa1 with capital expenditures that are greater than $20 per megawatt-hour, right?

A. I think so. These circles kind of overlap a little bit; it looks like three.

Q. And how many Baa1 utilities are $10 per megawatt-hour or less?

A. It's kind of hard to tell. Again, the circles overlap I think it might be five.

Q. Okay. So --

A. Maybe six. The circles are like pretty heavy right there.

Q. But because there's -- there's more in the $10 or less category than above, the median is approximately $10, correct?

A. Well, it's because the -- you take all the data together and you take the median and the fact there are these lower -- these that have lower numbers, your median is lower, all else equal.

Q. And in this particular scenario, if we were to take the average, we would get a number higher than $10?

A. I don't know.

Q. Is it possible?

A. It's possible. It would depend on what kind of average you were calculating too, whether a straight average or weighted.

Q. Have you done that?

A. I have not. It would not make sense to me.

Q. And under Baa2 one of the utilities has capital expenditures nearly at $30 per megawatt-hour, correct?

A. It looks -- it looks like it's getting up there, yeah.

Q. And on the far right under Baa3, is that two utilities?

A. Yes. I think so.

Q. And am I correct that those two utilities are Cleveland Electric Illuminating Company and Toledo Edison?

A. I don't know. I didn't list the names of those in my testimony anywhere.

Q. Okay. Maybe I can help refresh your recollection. Can you turn to page 191 of your deposition.

A. Yes. I'm there.

Q. And I'll start on line 15 -- or 14, "The answer is" -- I'm sorry, 15. "So we are on which -- you want Figure 4 -- and you're talking about on the far right; is that correct?"

A. Yep.

Q. And then "Yes.

"Answer: All right. You said the --

"Question: Baa3.

"Answer: Baa3. Okay.

"One of them is Cleveland Electric, and one of them is Toledo Edison."

A. Yep. That refreshes my memory so.

Q. Okay. And do you know whether Cleveland Electric and Toledo Edison are operated by the same entity, FirstEnergy Ohio?

A. I did not as I sat in my depo, and I didn't actually look that up, so I still don't.

Q. Okay. And am I also correct you do not know the last time Cleveland Electric or Toledo Edison filed a distribution rate case?

A. That's correct.

Q. Do you agree that if Cleveland Electric or Toledo Edison have not had a rate case in several years, that may be why they have not made large capital investments?

A. I mean, that could be one factor that affects how much they are spending on capital.

Q. Do you know if Cleveland Electric or Toledo Edison have a base distribution rate freeze?

A. Currently?

Q. Yes.

A. I don't know.

Q. Do you know if they had one in effect in 2014-2015?

A. I don't know.

Q. And am I correct that before putting this Figure 4 together, you did not determine the last time any of these entities filed a base rate case?

A. That's correct. That was not something that I analyzed in connection with putting together this figure.

Q. Am I correct you also did not determine whether any of these entities were currently under a base distribution rate freeze during 2014-2015?

A. That's correct.

Q. Okay. Going back to Baa2, these entities are Atlantic City Electric Company, Jersey Central Power & Light, Potomac Edison, and Pennsylvania Electric Company; is that correct?

A. I'll take your representation.

Q. And isn't it true that Jersey Central Power & Light and Potomac Edison and Pennsylvania Electric Company are all owned by FirstEnergy?

A. I don't know.

Q. And I apologize if I did ask this, you have not determined whether any of the utilities under Baa2 or any of the other utilities in this figure have filed a rate increase in the past five years? And by that I mean a rate case.

A. Yeah. It's not relevant to this analysis.

Q. The answer was "no", correct?

A. No, I have not looked at that specifically, no.

EXAMINER PRICE: Why is it not relevant

to your analysis?

THE WITNESS: Well, because I've actually done a series of robustness checks on these using different methodologies so I've actually spread it out to more years, to 2012 to 2017, and taken observations that are by company and by rating and by CAPEX by year, so I might basically multiply my number of observations by six and this is in my DMR-E testimony that I recently filed and I had done this also.

And when I prepared this and it's -- the results are robust, okay, across all years so that these factors average out and so I also took my new data from 2012 to 2017 and applied it to my -- used this method right here which is just averaging it across years, two two-year periods, and the results are robust to that too so.

MR. OLIKER: Your Honor, now that he is testifying about his other testimony in another case, which I understand we are not litigating here, and I think it's undue surprise to be talking about those now when they are not in his testimony.

EXAMINER PRICE: He was simply explaining why he thought they were not relevant.

MR. OLIKER: And just before that I

believe the record would reflect he said it would impact the numbers.

EXAMINER PRICE: So you are moving to strike his testimony or?

MR. OLIKER: No. I will leave it, your Honor. The record will stand as it says, and the self-contradiction will be self-evident.

Q. (By Mr. Oliker) And, Mr. Malinak, isn't it true that many states do not permit distribution riders for capital investment, if you know?

A. What types of distribution riders?

Q. Capital investment.

A. Any kind of rider? When you say "rider," are you referring to like a dividend payment?

Q. Yes.

A. Okay. So one that allows interim recovery. It wouldn't surprise me if there was states that did not allow that.

Q. And you do not know if Pennsylvania or New Jersey permit riders to recover distribution capital investment like the DIR, correct?

A. I don't know that.

Q. And under Baa1 these companies are Connecticut Light & Power, PEPCO, Potomac Electric Power, Commonwealth Edison, Metropolitan Edison, Ohio

Edison, and Pennsylvania Power Company; is that correct?

A. Is PEPCO Potomac Electric Power Company? I think you may have said that one twice, but I'll take your representation.

Q. And also included under that list is West Penn Power and Oncor Electric Delivery Company, correct?

A. You said Baa1?

Q. Yes.

A. I'll take your representation that that's the case.

Q. Okay. And you do not know if Ohio Edison is operated under the same or as the same utility as Toledo Edison and Cleveland Electric Illuminating Company, correct?

A. I'm not familiar with the exact structure, so I guess the answer is, yes, I'm not aware.

Q. And do you know whether West Penn Power, Pennsylvania Power Company, and Metropolitan Edison are all FirstEnergy distribution utilities?

A. I don't know whether that's the case or not.

Q. And do you know if PEPCO and Commonwealth

Edison are both owned by Exelon?
A. I know that PEPCO is. Actually I think could be Consolidated Edison is too.
Q. I think you meant to say Commonwealth Edison.
A. Commonwealth Edison, excuse me.
Q. Consolidated is New York, correct?
A. Yeah, yeah.
Q. Okay. On page 29 you reference -- let me make sure this is public. On page 29, line 6, you mention DP&L's employee count. As you sit here today, is the employee count lower than what's reflected in your testimony?
A. I haven't taken a look at that. I have heard that the Company has had -- has reduced its head count but that I just heard in kind of a hearsay way.
Q. Okay.
A. And that could be wrong. That's just my recollection.
MR. OLIKER: Your Honor, could we go off the record for a second?
EXAMINER PRICE: Yes.
(Recess taken.)
EXAMINER PRICE: Let's go back on the

record.

Please proceed, Mr. Oliker.

MR. SHARKEY: I apologize. I didn't realize you were ready.

EXAMINER PRICE: Not a problem.

Q. (By Mr. Oliker) Hello, Mr. Malinak. Earlier, I think we established to your knowledge all of DPL Inc.'s debt is unsecured, correct?

A. Yeah, at least the lion's share of it.

Q. When a borrower defaults on an unsecured debt, the lender can require the loan to be paid in full immediately, correct?

A. That's typically the case. I mean, maybe there's an agreement somewhere where they -- the lender's rights are restricted in some fashion but that's typically the case, yeah.

Q. And the lender may agree to some type of forbearance which would be accepting payment for less than the total principal; is that correct?

A. There's a variety kind of forbearances that might come into play. The lender would make a judgment based on the cash flows that they would earn with forbearance versus without and then make a business decision.

Q. But if a deal cannot be worked out

regarding some type of forbearance, the defaulting party may seek bankruptcy protection under Chapter 11?

A. That's one of their options. There are other chapters of bankruptcy proceedings and that kind of thing but that probably is one of their options.

Q. Chapter 11, however, typically applies for purposes of reorganization and to allow a business to continue to operate as a going concern?

A. That's my general understanding is Chapter 11 is a restructure and, yes, every effort is made for the company to be able to continue its operations if it can.

Q. And I think we identified that DP&L's debt is secured debt, correct?

A. A chunk of it is. I don't know -- I don't think all of it is but a chunk.

Q. And by "a chunk," you mean nearly all? There may be a small portion that is not secured?

A. As of what point in time?

Q. How about 2016?

A. Okay. My recollection is that this is my general recollection is that something like 4 or 5 hundred million of it were secured. There might be more and there was -- I think the revolver may not be secured and so sometimes there's a balance on that. But as of the end of 2016, you know, there was 7 -- I don't know if this is redacted or not. I think we agreed earlier it was public, that it was in the mid 700 range, and my recollection was the secured portion was less than that.

Q. And --

A. Could be wrong but that's my recollection as I sit here.

Q. And as we sit here today, DP&L's total debt is under $595 million, correct?

A. Meaning 2019?

Q. Yes.

A. I mean, I think it has gone down. There's been a fair amount of things that have happened over the last couple of years with their financial situation. You know, there's been some negative things that have happened in terms of their cash flows, their financial setting, but the loan -- I mean, their debt amount, I think, would be -- has gone down a little bit and probably that -- from the credit perspective that's probably a positive thing, but I think it has come down.

Q. And do you know whether DP&L's current long-term debt is 594 or 95 million dollars?

A. I don't know specifically. That sounds like it could be in that range. My recollection is it has come down. We're talking about DP&L, correct?

Q. Yes. Let's ask a hypothetical and I'm going to come up with some numbers talking about a situation involving DPL Inc. and DP&L. I'm going to make them up. There may be some similarity to actual numbers but for purposes of this hypothetical try to, you know, listen to these assumptions.

I would like to ask you to assume you have two borrowing entities, and in this hypothetical one is DP&L and one is DPL Inc. Let's assume Morgan Stanley provides an unsecured loan to DPL Inc. of $500 million and let's assume the New York Bank of Mellon provides a $200 million loan to DP&L which is secured by DP&L's distribution and transmission assets.

Assume for a second that DP&L does not pay a dividend to DPL Inc. but it otherwise has sufficient cash flow available to pay the debt expense due to the New York Bank of Mellon.

Now, assume that DPL Inc. does not have enough funds to service the debt expense due to Morgan Stanley. In this situation would you agree that one potential option would be for AES Corporation to provide an equity infusion into DPL Inc. that would allow DPL Inc. to meet its debt service obligations?

A. We are going to have to unpack this a little bit. So DPL Inc. is DP&L. DP&L is their primary asset, so in this hypothetical are the two -- is it -- are the entities linked in part of the same combined entity that they are actually? Or is this a different -- different hypothetical?

Q. My question is is one option in this hypothetical since no money is coming from DP&L, that the parent company for DPL Inc. could provide an equity injection to DPL Inc.?

A. If the combined entity is unable to service its debt and defaults on its debt, say, and one of the choices is going -- you know, some sort of restructuring, some sort of forbearance with their lenders, that kind of thing, that's one choice.

Another choice in that whole restructuring process, yeah, I mean, AES might -- could inject equity, but it would not make sense for them to do that economically probably due to what's called the debt overhang problem.

Q. Okay. And sticking with this set of

facts in the hypothetical we've been talking about, if AES does not provide an equity injection to DPL Inc., you agree one option would be for DPL Inc. to seek protection from its creditors in bankruptcy court?

A. Yeah. As I said before, they would have kind of a range of options including trying -- seeking forbearance from their creditors, and one of them would be -- you know, would be to try to seek protection in bankruptcy, yeah.

Q. Okay. And in the hypothetical situation where DPL Inc. goes to bankruptcy court, you do not know if Morgan Stanley, the holder of an unsecured loan, could obtain an order from the bankruptcy court requiring DP&L to pay Morgan Stanley instead of the New York Bank of Mellon?

EXAMINER PRICE: Can I have that question back, please.

(Record read.)

MR. OLIKER: Or I could rephrase it and say before the New York Bank of Mellon.

MR. SHARKEY: Your Honor, I am going to object to this. It calls for a legal conclusion. The scope of a bankruptcy court's abilities, I don't think that's an appropriate question for Mr. Malinak.

MR. OLIKER: It talks about bankruptcy in his testimony as it's a bad thing, and I think I'm entitled to talk to him about what would happen if there was to be a bankruptcy and find out his familiarity. If he doesn't know, he doesn't know.

EXAMINER PRICE: You have oddly constructed a hypothetical and asked him something he didn't know.

MR. OLIKER: Because I assumed he doesn't. If he does, he can enlighten me.

EXAMINER PRICE: Why don't you just ask him more directly.

Q. (By Mr. Oliker) If -- that's fine. Now, going back to this hypothetical situation, Mr. Malinak, in the event that DPL Inc. went to bankruptcy court, could Morgan Stanley obtain an order from the bankruptcy court requiring DP&L to pay Morgan Stanley before paying its creditors, the New York Bank of Mellon?

MR. SHARKEY: Same objection, your Honor. I don't believe it was any more specific than his last question.

EXAMINER PRICE: He can answer if he knows.

A. I don't know bankruptcy law.

EXAMINER PRICE: You were right. He didn't know.

Q. And in this hypothetical situation we've been talking about, would you agree that Morgan Stanley may agree to reduce the amount of the outstanding loan from $500 million to a lesser amount, whether either in bankruptcy or in some forbearance?

A. Well, in financial distress situations they are very fluid. There's almost anything that can happen in terms of what gets negotiated among the parties and there's legal elements there. There's economic elements and it's very difficult to say.

Q. And one of those potential outcomes would be Morgan Stanley agreeing to take less than the full principal, correct?

A. Yes. As I said, anything is possible in that -- that's in the mix of things that are possible, I'm sure. And, again, this is a hypothetical.

Q. And to the extent that -- this is again sticking with our hypothetical situation, that DPL Inc. were to file for bankruptcy, Morgan Stanley may agree to exchange the $500 million debt obligation for an equity interest in DPL Inc., correct?

A. You know, again, there's -- in my experience, again, is not as a lawyer but as a consultant in connection with bankruptcy matters, there can be all kinds of different outcomes, and I'm sure that in one of them is that creditors take equity interests in return for their debt interests but then there would be other moving parts to the whole thing too as well.

Q. And as a follow-up to that question, if Morgan Stanley exchanged its $500 million debt interest for equity interest, would you agree that would result in a more favorable financial integrity for DPL Inc. relative to the situation it's in today due to the delevering of the capital structure?

A. I mean, assuming sort of all else equal in this hypothetical, if at the end of the proceeding the Company that emerges has a relatively thicker equity structure, and assuming it has the other assets and liabilities that have been restructured, kind of haven't been restructured in some major way, okay, holding all of that constant, all else equal, if you have a thicker equity structure, you are less risky on the financial side.

Q. And if Morgan Stanley and any other creditors that may exist in this hypothetical situation we're talking about were to obtain equity in DPL Inc., that would also provide equity in DP&L, correct?

A. I'm sorry. Are you talking -- are you talking about Inc. or are you talking about DP&L or both?

Q. Maybe I can restate the question. If a creditor of DPL Inc. was to exchange its -- its debt interest for equity, through that exchange it would then become an owner of DP&L, which is the subsidiary, correct?

A. Yes, as long as everything else stays the same, yeah.

Q. And in this hypothetical that we've been talking about, do you know whether a bankruptcy court could auction off the assets of DPL Inc. which would include DP&L to the highest bidder?

A. You know, again, bankruptcy law and proceedings are very complicated, but my -- my experience, again not as an attorney but as a consultant, is that, you know, anything goes and that -- I mean, that could be one thing. I don't know legally whether they could do it, but I've seen things like that before in prior matters.

Q. And you have never worked on a bankruptcy matter involving a public utility, right?

A. Not that I can recall as I sit here today.

Q. And going to page 5 of your testimony.

A. I'm there.

Q. This is on page 10 -- I'm sorry, page 5, line 10, you indicate that "Under these conditions, DP&L's ability to provide safe and reliable service to its customers would be in peril." And regarding this statement, you were not referring to reliability of generation or transmission service, correct?

A. Actually that is -- that is one of the things I'm referring to.

Q. Generation service is one of the things you are referring to?

A. I'm sorry. I thought you said distribution and transmission.

Q. Maybe I can restate the question. On page 5, line 10, when you say "Under these conditions, DP&L's ability to provide safe and reliable service to its customers would be in peril," in that statement you were not referring to reliability of generation service, correct?

A. I think that's generally correct. The focus of this is really on transmission and distribution, but my analysis includes generation in the business still, so technically to the extent that DP&L is providing generation services of some kind to its customers, then that would be included, but the focus is definitely transmission or distribution.

Q. You're familiar with PJM Interconnection, correct?

A. At a very general level. It's not an area of my expertise.

Q. DP&L has transferred control of its transmission assets to PJM Interconnection, correct?

A. No. I don't know the degree to which they've done that. My understanding is that PJM in general is responsible for dispatching, and my understanding is they have some control over -- over DP&L's transmission and distribution. I just don't know the degree.

Q. And when you said "distribution" in your answer, did you mean generation, or did you truly mean distribution?

A. No. They are on the transmission -- excuse me, yes, PJM is on transmission.

Q. Okay. And do you agree that PJM is responsible for ensuring generation resource adequacy within DP&L's service territory, correct?

MR. SHARKEY: Objection. I don't know that he established that's within the scope of Mr. Malinak's knowledge. I think he's plainly strayed beyond it.

MR. OLIKER: I am asking him about generation. He can say if he doesn't know.

EXAMINER PRICE: You can answer if you know.

A. My general understanding is that, you know, PJM is responsible for ensuring supplies of power across their whole regional transmission service territory. And DP&L, my understanding, is within that; but, again, it's not one of my specific areas of expertise.

Q. And would you agree that you have done no analysis to determine whether there would be any generation reliability issues in DP&L's zone of PJM if all of DP&L's generation assets were shut down?

A. I've not done that analysis.

Q. You agree you have done no analysis to determine if additional transmission upgrades in DP&L's zone would be necessary if DP&L's generation assets were shut down?

A. I have not done such an analysis. Do I -- I am aware that when capacity is taken offline,

it can have an effect on transmission and distribution assets in the area; but, again, it's not one of my specific areas of expertise.
Q. And do you agree, as we sit here today, DP&L no longer owns operational generation assets?
A. DP&L.
Q. Yes.
A. I think that's right.
Q. And your testimony refers to DPL Inc., which you agree that entity is not a regulated public utility?
A. Well, it has -- its main sort of asset is DP&L, and so it's at least indirectly regulated. But, again, I'm not a lawyer on -- on the separate -- the exact way they are legally separated. If you are talking about the Inc., parts of Inc. that are not DP&L, my understanding some of those are either not regulated or regulated lightly at best, but it's not something I've studied.
Q. You agree that DPL Inc. has no ability to file an application before the Commission for rate recovery.
A. On --
Q. I am not asking for a legal determination, just your understanding.

A. For -- I am not aware of any regulated operations of Inc. other than DP&L, so it would be DP&L, would be my understanding, would file a rate case.

Q. Are you familiar with Ohio's corporate separation plan requirements?

A. No, not really.

Q. Have you reviewed any Ohio statutes that may contain requirements on the separation of competitive and noncompetitive services?

A. Not that I recall but I may have over the course of my work on these matters.

Q. You agree that DP&L and DPL Inc. have separate financial statements that are filed with the SEC, correct?

A. They file financial statements. Some are Inc. and some are for DP&L separately from Inc. but DPL Inc.'s financial statements are almost all DP&L, just substantively.

Q. But DP&L's financial information is separate from DPL Inc.'s, correct?

A. They file a separate set of financial statements but Inc. is -- Inc.'s financial statements, if you look at them and you compare them to DP&L, they look really similar in lots of ways. I mean, the revenues are like maybe 1 or 2 hundred million different max, maybe less than that.

EXAMINER PRICE: Well, now I will give you your warning on going too far. When you preface your aside with a but, you know you are probably going beyond the scope of his questions. So please listen carefully to counsel's question and answer the question and only the question.

THE WITNESS: I'm sorry, your Honor.

MR. OLIKER: Thank you, your Honor.

Q. (By Mr. Oliker) Mr. Malinak, you would agree that if DP&L does not provide a dividend to DPL Inc., DP&L would have sufficient cash flows to cover its operation and maintenance expenses, debt service expenses, and its capital expenditures in order to maintain safe and reliable service?

A. We talked about DP&L paying a dividend and that's the -- that's the way it's accounted for. It's basically designated as a dividend if the money is going to be used at the Inc. level, and my answer is that if you -- if you assume that -- that they did not pay a dividend, you would be assuming that DPL Inc. would then probably have -- go into severe financial distress and that is what my testimony says.

And so, you know, with that -- but are you hypothetically saying that that's not the case, or are you -- are you asking me to assume that DP&L would not send any money up to Inc. for debt service?

Q. Could you turn to page 62 of your deposition.

A. Yep.

Q. Let me know when you are on 62.

A. I am.

Q. Now, on page 9 -- or page 62, line 9, the question "I understand, Mr. Malinak, that you don't agree with the hypothetical, and -- but I'm asking you whether you've done any analysis to determine whether, from a -- on a monetary basis, whether if DP&L does not provide a dividend to DPL Inc., whether or not it has sufficient cash flows to cover its operation and maintenance expenses, its debt service expense and its capital expenditures, in order to maintain safe and reliable services?

"And I still haven't gotten an answer to that question.

"Answer: Okay. If -- yeah -- if you assume, you know, unrealistically that -- and leave aside the, sort of, real substantial relationships and -- and of this, and assume DPL Inc., in effect, doesn't exist, and DP&L is treated as a stand-alone entity in that world, that hypothetical world, if you just, you know, focused on its level of revenues and costs, and so forth, I believe they have -- would have sufficient cash flow to, you know -- to do what they need to do, again, abstracting -- from completely abstracting from the reality of the situation." Did I read that correctly?

A. Yeah. In fact, that's what I was starting to say in answer to your prior question. And, again, we say would and that's within the confines of my projections which are based on the Company projections which are looking out into the future so there is a lot of uncertainty there.

Q. And just to further extrapolate on that, would you agree that would be the case each year of the proposed ESP?

A. I don't know that I can say that there would be because, like I just said, you are projecting into the future. You don't know for sure. But the scenarios that I have relied on, again in this hypothetical, where this hypothetical world where you ignore the reality basically, you know, my projections sort of mathematically show that DP&L would have sufficient cash flow, you know, to cover its O&M costs. It would still have some net income.

Q. And just to be clear, that's without the DMR, correct, and the Reconciliation Rider?

A. That's leaving aside those -- the DMR, yes --

Q. Thank you.

A. -- and the Reconciliation Rider, although the Reconciliation Rider is a relatively small number.

Q. Turning to page 52, you say that DP&L's debt has restrictive covenants that prevent it from taking on additional debt. This restrictive covenant --

A. I'm sorry. 52 of my testimony or my deposition?

Q. Of your testimony.

A. Oh.

MR. SHARKEY: And, Joe, where are you? The bottom of that page, that answer is designated confidential.

MR. OLIKER: That's what I am trying to make sure I don't go into.

Q. (By Mr. Oliker) And I believe this is in the public record and this is on page 52, line 7, you say that DP&L's debt has restrictive covenants that prevent it from taking on additional debt. This restrictive covenant you identify was entered into when DP&L still owned generation assets, right?

A. I believe that's right. This 45 million refinancing took place in the middle part of 2016, and at that time the Company had not -- I don't believe it had transferred out its generation yet, but the timelines on these things run together for me.

Q. Am I correct prior to filing this testimony that we are talking about today, you did not review the actual debt agreement that you reference on page 52?

A. I did not recall reviewing it, and it turns out it was in my backup materials, but I didn't recall reviewing it.

MR. OLIKER: Your Honor, may I approach?

EXAMINER PRICE: You may.

Q. (By Mr. Oliker) Mr. Malinak, is there a document in front of you that's titled "Credit Agreement"?

A. Yes.

MR. OLIKER: And, your Honor, I would like to mark this document as IGS Exhibit I believe we are, is it, 101?

EXAMINER SCHABO: 1001.
MR. OLIKER: 1001.
EXAMINER PRICE: It will be so marked.
(EXHIBIT MARKED FOR IDENTIFICATION.)
Q. (By Mr. Oliker) Mr. Malinak, does the document that's been placed in front of you appear to be the document that is referenced in your testimony?
A. Yes. It appears to be, subject to it being many pages, and I would want to take a closer look, but it does look like the one.
Q. And is the document dated August 24, 2016?
A. It is.
Q. And was the first time you reviewed this document at your deposition?
A. This is the first time I remember doing it. Like I said, it turns out this was in my backup materials, but it was a couple years ago, and I didn't remember reviewing it.
Q. And what do you mean by backup materials?
A. So I have my staff prepare for me backup binders, so it has pages that support various things, and some pages from this document were included in it.
Q. Okay. Thank you.

A. I just didn't remember.
Q. And am I correct that The Dayton Power and Light Company is listed as the borrower on this document?
A. It is.
Q. And if we were to turn -- first, if we go to the table of contents, we can identify that the negative covenants are listed under Article VII; is that correct?
A. That appears to be the case, yes.
Q. And that identifies page 66 as a good place to look for the negative covenants, correct?
A. Yes, it does.
Q. And can you turn to that page, please.
A. I'm there.
Q. And am I correct that this is the section that contains the restrictive covenants you identify in your testimony, or at least one of the sections?
A. I believe it's one of the sections, yes.
Q. And --
A. At least one, yeah.
Q. And on page 66 under "Article VII, Negative Covenants," am I correct that it states "So long as any Lender shall have any Loan or other Obligation relating solely to the payment of

principal or interest on any Loan or fees payable hereunder shall remain unpaid or unsatisfied, the Borrower shall not, nor shall it permit any Subsidiary to, directly or indirectly," but then it goes down to 7.01, "Create, incur, assume or permit to exist any Indebtedness, except" and then there are several exceptions, (a) through (h)?

A. Yeah. That's what these words say.

Q. And under Section (b), am I correct that the document permits up to $200 million in borrowing under the existing revolving credit agreement?

A. Yes, yes. It appears -- it appears to say that, up to that amount, so that puts a cap on it, it looks like.

Q. But if we go down to Section (c) of 7.01, am I correct that section identifies that DP&L may borrow up to $100 million after the consummation of the separation transactions to finance the acquisition, construction, or improvement of any fixed or capital assets?

A. You are in Section (c)?

Q. Yes.

A. Where is -- where are the words "up to" in there? I'm sorry. I am just not seeing it right away.

Q. What -- would you restate the answer that they can borrow $100 million for fixed capital assets?

A. Except, I mean, one problem I'm having just in general, I am going to try to answer the question, is that these agreements are legal language, and in my experience too pulling out particular sections and not reading the whole document can sometimes provide only a partial picture, but it looks like -- it looks like they could -- that they are prohibited except they can borrow, I guess, up to these amounts. I didn't see that language exactly.

Q. And I'm sorry. I didn't mean to interrupt you.

A. I don't see the "up to" part.

Q. Okay.

A. I could be just missing it.

Q. And when you say "up to these amounts," that's because under Section (c) it identifies two amounts, 150 million prior to the consummation of the separation transactions and 100 million after the consummation of the separation transactions?

A. Yes. Dayton Power and Light looks like it's restricted from borrowing at most these amounts would be my best interpretation, again, not being a lawyer.

Q. And if we go to page 25, we can see the definition of separation transactions, and it means "the restructuring of the Borrower's operations in accordance with an order by PUCO, including the separation of the Borrower's generation assets from its transmission and distribution assets"; is that correct?

A. That's the way that reads.

Q. So I think we can synthesize that one down to 150 million before they transfer the generation and $100 million after, correct?

A. That appears to be the case.

Q. And if we go down to Section (h) back on page 67, am I correct that there is another exception that says "Other unsecured Indebtedness in an aggregate principal amount not exceeding $25 million at any time outstanding."

A. Yeah. I would characterize it as a restriction. I mean, they are saying I can't borrow more than 25 million so, but it looks like they could borrow up to that amount, not exceeding, has that language there.

Q. And taking that in Section (c), that

would be 125 million, correct?

A. I don't know if you can add these two together honestly. I mean, I would have to just -- maybe but I would want to read and make sure and think about it because my experience is you read these things, and they are closely written.

Q. To be clear you don't recall reading it before you submitted your testimony, correct?

A. Yeah, I don't recall having read it. Again, I found it -- found the pages -- these exact pages in my backup materials after my deposition.

Q. And if you could turn to Section VI.

A. Very quickly I would like to add one thing.

Q. Maybe -- maybe --

EXAMINER PRICE: Perhaps on redirect.

Q. (By Mr. Oliker) Could you turn to Section VI. There are also affirmative covenants, correct?

A. I'm sorry, what page?

Q. I believe it is on -- first, let's go --

A. I found a Section VI called "Affirmative Covenants."

Q. Yeah. Let's -- under Section VI, that contains affirmative obligations on DP&L, correct?

A. I just -- I don't know as I sit here, I mean, whether the covenants are sort of this mutual thing or not, but it looks like it's focused on the borrower, "the Borrower shall," and, again, I am not an expert on these things. But for all I know covenants are only related to the borrower, not the lender but.

Q. Okay. And so to be clear, if I were to synthesize down the preamble at Article VI, "Borrower shall cause -- shall and shall cause each Subsidiary to," and if I go to 6.06, says "Maintenance of Properties"?

A. Yes.

Q. "Maintain, preserve and protect all of its properties and equipment necessary in the operation of its business and good working order condition, ordinary wear and tear excepted; and make all necessary repairs thereto." Is that another way of saying DP&L has to ensure that the equipment is kept up and not degraded in value?

A. I am -- I am reading the rest of the clause on the next page. This is just -- again, it's one of the reasons why it might -- the text of my testimony I say I understand from the Company that this debt has these characteristics as this is -- this is legal here. It says -- it says -- it looks like there is an exception, make all necessary repairs thereto and renewals except in the case of clauses (a) and (b) where the failure to do so could not reasonably be expected -- reasonably expected to have a Material Adverse Effect.

Q. Which is a defined term, correct?

EXAMINER PRICE: I am confused about this entire line of testimony. Mr. Malinak, did you rely upon this credit agreement for your statement saying that there are restrictive covenants prohibiting restrictions against additional debt issues?

THE WITNESS: No, your Honor, not directly, indirectly in that I looked at these pages, but I relied directly on the Company's representation.

EXAMINER PRICE: You looked at these pages to confirm what the Company had told you?

THE WITNESS: Yes, trust but verify basically. And it was -- I think Craig Jackson's testimony may have been where the elements of this whole agreement were discussed.

EXAMINER PRICE: Okay.

THE WITNESS: But I'm not sure. Your Honor, I hate to ask this, I could actually use another break.

EXAMINER PRICE: We'll take a 5-minute break. Let's go off the record for 5 minutes.

(Recess taken.)

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

Mr. Oliker, you may continue.

MR. OLIKER: Thank you, your Honor.

Q. (By Mr. Oliker) Now, under Section 6.06, would you agree that it would be logical to have a clause in a credit agreement requiring the borrower to maintain their equipment when the loan is secured by that equipment?

A. That would -- it would seem logical to have -- if the lender could get a clause like that in there and it was a secured loan, that would be logical.

Q. And, Mr. Malinak, you consider this credit agreement to have been entered into by DP&L while DP&L was rated as junk, correct?

A. DP&L?

Q. Yes.

A. I would have to go back and look to see what their rating was, but my understanding was that this loan agreement was entered into and the market the Company went to was referred to as kind of the high yield market, the lower credit level market, so I would have to look at the rating history to see exactly what their rating was at the time.

EXAMINER PRICE: Don't we commonly call high yield junk?

THE WITNESS: Yes, but I am making a distinction between what their rating was at the time because there could be a lag and what the substance of the agreement was.

EXAMINER PRICE: Okay.

Q. (By Mr. Oliker) And since the execution of this credit agreement, you would agree that DP&L has been paying interest of approximately in the 4 percent range?

A. This loan, I think, has a variable rate and you are asking me what they actually have been paying and I don't know if I've looked at that exactly. I think that for purposes of my analysis, I think I assumed a rate in that range for this debt, but I was doing a projection. Yes, I assumed -- if you look at Exhibit RJM-19B, I assumed an interest rate of 4 percent even though it says -- even though I think it was variable.

Q. Okay. And with respect to credit ratings, the main factor that the rating agencies look at is funds from operations, correct?

A. Yeah. That's one of the factors they look at, yes.

Q. That's the main factor, correct?

A. It's -- it's -- if you look at across them all, it's probably the -- if you had to pick out one that was most important, I think that is -- you know, they look at funds from operations, but they look at it as a ratio, okay, of debt or of other -- other denominators but, yeah, that's a very important fact for rating agencies.

Q. And credit rating agencies may look at return on equity, and if they think it is reasonable, count that factor as credit positive?

A. I think -- as I think I said earlier, it is a factor they look at. I think they care most about total cash flow, but one of the -- it could be a secondary factor. It could even be one that affects their view of the regulatory environment as well, but it's something they look at.

Q. And regarding the DMR and the revenues derived from that chart, you are not familiar with the way that the funds are accounted for, correct?

A. Not specifically. I have a vague recollection that there is -- there might be a separate account that -- that they -- they're accounted for in but, again, that's just a vague memory.

Q. And I believe that the DMR is supposed to go to debt reduction, correct?

A. I think that might be in the Stipulation, but when you look at my two scenarios, there is a with and a without, and when you compare those two, the assumptions I make, substantive assumptions I make, is that it's going to the debt paid out and debt service. And it's -- you know, the increment -- that's the incremental cash flow in fact -- effect.

Q. And that's because you believe cash is fungible. And without the DMR there is less cash, right?

A. Well, I don't know if I believe it because cash is fungible. I mean, that's the -- that's -- that's the way I've modeled the cash flows. And the fact that cash is fungible is a sort of separate point.

Q. Okay.

A. It's really making the point that substantively that's the case but accounting how things are accounted for could be -- whatever it is, it is.

Q. And you remember our earlier discussion regarding the concept of the rate of return?

A. Yes, I do.

Q. And do you agree that the rate of return is intended to compensate DP&L for its capital costs, both debt and equity?

A. I would say that the regulated rate of return is -- is designed to compensate DP&L, and I would include its investors.

MR. OLIKER: Could I have his answer read back?

EXAMINER PRICE: You may.

(Record read.)

Q. Mr. Malinak, in your answer, were you including debt holders as investors?

A. Yes.

Q. Okay. If the DMR revenues are sufficient to cover all of DP&L's interest obligations, would you agree that the revenues produced by DP&L's other operations are not needed to pay for DP&L's interest? Just mathematically.

A. Not the way you put it, no. You need the two together. You need a total revenue that covers O&M and all of the probably absolutely necessary, 100 percent necessary CAPEX, but technically debt payments come before CAPEX so you don't -- no, I don't look at the DMR as a separate thing. You have to look at the total amount.

Q. Okay. From a different perspective though, all else being equal, when you add the DMR, DP&L's net income and cash flow is increased, right?

A. Yes, the -- you add the DMR, DP&L's numbers go up, so do DPL Inc.'s, because DP&L is the most fundamental part of DPL Inc.

Q. And that is because the DMR is proposed to add revenue without changing the total amount of costs that DP&L is required to incur and, therefore, increases cash flows?

A. Yeah, essentially, yes.

Q. And from an accounting perspective, if the DMR increases the total amount of net income and a portion of that net income is not sent up to the parent company, it becomes retained earnings, right?

A. Strictly from an accounting point of view, okay, if the amounts that -- of the after-tax net operating income that are not sent up dividends, the order is, you know, DP&L has a certain amount of net income, then if they can afford to send the cash up to the parent, then they do it. And then that hits equity after -- after the fact, okay? So I don't know if that answers your question, but I wanted to get the order straight.

Q. In that example you gave, whose equity is that? DPL Inc.'s or DP&L's?

A. If the -- strictly as an accounting -- from an accounting perspective, if you -- if DP&L designates cash flows it sends to DPL Inc. as dividends, you would reduce DP&L's equity.

Q. Okay. But whatever revenues become retained earnings, those revenues are added to -- let me say that again.

Generally speaking all retained earnings are added to the equity on the balance sheet, right, after determination whether there is a dividend to the parent?

A. If -- if the dividend to the parent is less than net income, there will be an increase to the equity of DP&L.

Q. Okay. And we typically consider that retained earnings, right?

A. It would increase retained earnings.

Q. And all else being equal, you agree that the DMR increases the amount of equity on DP&L's balance sheet relative to a situation without the DMR.

A. Yeah. In my projections DP&L's equity is higher with the DMR and Reconciliation Rider than without.

Q. Would you agree from a ratemaking perspective to the extent that the DMR increases DP&L's cash flows, if those cash flows are reinvested in distribution assets, it will permit DP&L to earn an equity return on funds that were actually provided by customers?

A. So in this hypothetical, you're saying that if in my with scenario that you have more cash flow with DP&L, if DP&L's capital expenditures went up, that that would be -- then they would be able to earn an extra return of and on that capital?

Q. Yes.

A. That didn't happen. That is not in my projections but, yeah, if -- if, in fact, the incremental revenue went to capital expenditures and it was approved by the Commission, then they would be able to earn a return of an audit but that's not what my projections assume.

Q. You agree that a portion of the cash flows that DP&L is projected to invest in distribution assets are provided by customers because revenue is fungible?

A. Yeah, because -- because revenues are fungible all utility revenues that flow to the bottom line, some of those are often used for CAPEX which results in, you know, investments by the utility. In effect, I guess the assumption is that those profits are -- you know, belong to investors, and so they reinvest them.

Q. And are you familiar with the concept of an electric cooperative?

A. I would say I'm generally aware of electric cooperatives and, you know, like as a general matter having been involved in work in this industry for a while.

Q. And electric cooperatives are owned by their customers rather than investors, correct?

A. Yeah, that's my general understanding is that they are -- the equity, if you will, is effectively owned by customers sort of like a mutual life insurance company or other forms of cooperatives.

Q. And you agree that customers that pay the DMR obtain no ownership interest in DP&L?

A. Well, I mean, customers are stakeholders. They don't receive a particular like security or something to my knowledge, but they obtain a clear benefit for -- for the money that they are paying, all of the revenues that they pay including the DMR.

Q. But the revenues from the DMR, they're not segregated into a specific account; it is treated as customer equity on the balance sheet, correct?

A. That's my understanding, that they're accounted for like regular revenues.

Q. Okay. And in your testimony you assumed that customers pay $525 million into the DMR charge, correct?

A. Yes, over five years.

Q. And that amount is about $220 million shy of the total outstanding long-term debt that resided at DP&L at the time you filed your testimony?

A. Well, that -- you are comparing apples and oranges there because the 525 is pretax revenue, and the debt balances are after-tax dollars. But so I don't know if that makes sense to make that comparison.

Q. But just on a straight number comparison, would you agree it's just over a $220 million difference?

A. The difference between 700 and some million and 500 some billion is 200 million.

Q. Okay. And are you familiar with the Tax

Cut Jobs Act?

A. I know generally what it is.

Q. Did the Tax Cut Jobs Act change the federal income tax level from 35 percent to 21 percent?

A. My memory is that one of the changes was that. You said corporate tax rate, right?

Q. Yes.

A. Yeah.

Q. And the Tax Cut Jobs Act was in effect for 2018 and today, correct?

A. I don't know exactly when it kicked in but I -- it's definitely in place today, and it was definitely in place for much of 2018, may have -- probably all of it.

Q. Okay. And so the only year that the DMR would have been subject to a 35 percent tax rate would have been 2017, correct, and only a portion?

A. Are you asking a hypothetical in which I somehow -- I were able to tell back in early 2017 what was going to happen with the TCJA?

Q. No. I'm asking how much tax related -- would relate to the DMR in 2017 under the actual tax structure that occurred in that year.

A. Okay. So in 2017, okay, this is true of all my projections because we were working from the screen of 2017 and we didn't have anything -- that was the information that we had is my state and federal tax rate was in the neighborhood of 35 percent, 36 percent, it was fairly close, right in there.

Q. And in 2017, did DP&L take an economic impairment of $100 million for its generation assets?

A. In 2017?

Q. Yes.

A. I don't know.

Q. And if it did, would that allow it to avoid paying any tax on the DMR?

A. I have no idea given that the complexity of the tax arrangements that -- you know, tax books versus financial books. I mean, they had already taken a lot of impairment, and I don't know what the tax treatment of those is, so adding 100 million could have no incremental effect.

Q. And/or it could have an effect, right?

A. Without knowing their tax situation, it would be really hard for me to say. And, again, we are talking about cash taxes and versus longer term. I just -- I don't know.

Q. And the tax rates that would apply for

2018, '19, '20, and '21, if we applied the 21 percent rate, would you agree that would reduce the total revenues available to DP&L for the DMR by about 80 to 85 million dollars, just 21 times 420 or .21, I suppose?

A. I mean, you're talking about ex-post, so my testimony in this case was ex-ante, what I knew at the time in March of 2017. If I had -- was somehow able to know that the rates were going to come down, then I would have changed what I did, and it would have had, you know, all else equal, you make more money after-tax when the tax rates are lower --

Q. Okay.

A. -- abstracting for their tax situation.

Q. If we were to look at the after-tax value of the DMR for each year of the ESP that's been proposed and to add up that amount, it would be a number that's bigger than $400 million, correct?

A. No.

Q. Could you explain why you disagree?

A. Yeah. 525 times .65 is 340 million.

Q. Okay. And that's based upon the tax rate that you assumed would be in place when you filed your testimony, right?

A. That's correct.

Q. And if we were to use the actual tax rates that are in effect in 2017 and then what's been changed from the Tax Cut Jobs Act, you would agree that the number after-tax associated of the DMR would be greater than 400 million.

A. No.

Q. What is the number you came up with?

A. I may have punched the wrong buttons, but I got 396 million. I'll try again. This is just the DMR, right?

Q. Yes.

EXAMINER PRICE: We'll sit on 396. Let's move on.

MR. OLIKER: Okay.

Q. And coming back to a question I asked you earlier, that number, the 396 million, that number is very close to half, if not greater than half, of the total debt that was outstanding and sitting at DP&L when you filed your testimony?

A. Maybe just a little bit over half --

Q. Okay.

A. -- without looking back at the exact numbers. Either a little over or a little under.

Q. Okay. And your testimony talks about the ESP versus MRO test, correct?

A. Yes.

Q. And you refer to that test as the more favorable in the aggregate or MFA test; is that correct?

A. Yes.

Q. And under your analysis, when assumed that the MRO is not permitted to include a DMR, the ESP is quantitatively more than $500 million more expensive than the MRO.

A. I think that's right. I am just double-checking. Okay. If you turn to page 13 of my testimony, pages 12 and 13, I actually calculate it two ways. So the bottom of page 12, here I talk about the 525 million and then -- but I also look at it on a present value basis and that's on page 13 and it's less than 500 million in that case.

Q. But the answer --

EXAMINER PRICE: Let's go off the record.

(Discussion off the record.)

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

Q. (By Mr. Oliker) I think you said the answer was, yes, it was quantitatively worse than 500 million --

A. No.

Q. -- with the net present value adjustment?

A. It becomes lower than 500 million with the net present value adjustment.

Q. Okay. And when you state on page 9, line 16 through 19, that the DMR and Reconciliation Rider would be available in an MRO, for purposes of this statement, you are relying upon counsel for advice, correct?

A. Yes, for the most part. And if you look at my footnote 7, I say I understand that the DMR may be recoverable under an MRO, and I think somewhere I say -- maybe even under -- in the last sentence I say maybe even under a distribution rate case or in another proceeding, but it also makes -- makes sense to me kind of logically to think of it that way because of the financial straits the Company would be in under an MRO without a DMR; but, again, legally I'm relying on counsel.

Q. And you don't recall having reviewed what is contained in the statute that outlines what may be included in a market rate offer proposal.

A. Yeah, I don't remember specific -- I have reviewed it, but I don't remember what it said.

Q. And you just alluded to this a minute ago, on page 9, line 11, you indicate that DMR and RR would be available potentially in a distribution rate case. Am I correct that this statement is also based upon discussions with counsel?

A. I'm sorry. Where is that real quickly?

Q. I believe it is on page 9, line 11, but I can check.

EXAMINER PRICE: That's correct.

A. Yes, thank you. I was stuck on the footnote there. Yeah, it's counsel and I did read the underlying statute or regulation and this is what I always do. It's sort of like trust but verify. Based on my reading of it, it didn't seem clearly -- again, as a nonlawyer but it didn't seem to clearly prohibit it, and so I accepted counsel's representation.

Q. And just so I can clarify, did you say you did not review the underlying statute?

A. No. As I said earlier, I did -- I did read the underlying legal documents, but I don't remember what they said, but I always do that when counsel asks me to assume something. I will still look at it and --

Q. And the legal --

A. -- on rare occasions I've seen times when I come back and ask more questions about it, so it's sort of a trust but verify.

Q. The legal document you are referring to is the MRO statute, correct?

A. It was the relevant authority for counsel's assumption which I don't recall exactly what it said or what it was but.

Q. Am I correct you have not reviewed Chapter 4909 of Ohio law?

A. I don't recall.

Q. Okay. And am I correct you have never submitted testimony in a base distribution case?

A. Yes. I have not.

Q. And you do not know whether base distribution rates are required to be set based upon a specific statutory formula.

A. I am not aware one way or the other, but it would not surprise me if there were specific statutes that drove what can go into a base distribution rate.

Q. And you do not know whether the Commission in Ohio has concluded that riders are not permissible in a base distribution rate case.

A. I do not know that one way or the other.

Q. But you do agree that in a distribution rate case the Commission would exclude from rate recovery any investments that were not owned by DP&L.

THE WITNESS: Would you read that back again?

EXAMINER PRICE: Please.

(Record read.)

A. Again, I don't -- I'm not familiar with the exact rules that are followed in a distribution rate case in Ohio. But, you know, it wouldn't surprise me if that is the case, but I'm just not familiar with it.

Q. And you do not know if a distribution rate case could authorize the recovery of generation-related costs related to the Reconciliation Rider or OVEC in general?

A. You mean legally.

EXAMINER PRICE: Are you asking for a legal conclusion?

MR. OLIKER: I am not asking for a legal conclusion, your Honor. He is not a lawyer, I don't believe.

A. I guess I don't -- I don't know whether the statute or the relevant regulations allow it or don't allow it. I do know that my understanding is that the Reconciliation Rider was part of the Amended Stipulation and that it -- it has been part of rates since the Amended Stipulation was approved.

Q. In a distribution rate case, a utility may not propose to recover a specific debt expense, rather, it is authorized to recover a rate of return on invested capital, a portion of which is debt.

EXAMINER PRICE: Can we have the question back again, please.

THE WITNESS: I don't think it was a question, was it?

EXAMINER PRICE: It better have been a question.

(Record read.)

A. Okay. I guess the phrase the question and then you made a statement. But, you know, while I don't know the exact requirements of the relevant statutes and regulations, you know, my general understanding is that the Company gets a return on its distribution capital expenditures based on the overall cost of capital, not specific debt or other financing.

Q. Okay. And I think you said this, stated differently the allowance for debt expense is through the rate of return calculation itself, correct?

A. And that's my general understanding of the way that ratemaking works so.

Q. On page 10 you say that the more favorable in the aggregate test includes the potential impact on the reliability associated with different scenarios. You have not attempted to quantify the differences in reliability that may occur under the different scenarios, correct?

A. I have not tried to specifically quantify that.

Q. Okay. And on page 18 you say that one of the benefits of the ESP that AES and DP&L --

EXAMINER PRICE: Could you give us a line reference?

MR. OLIKER: Yeah. One second.

Q. On page 18, and I believe this is on line 15, it says "Such non-quantifiable benefits include AES agreements not to collect dividends or tax payments from DPL Inc." Do you agree that DPL Inc. is not foregoing dividends from DP&L?

A. This is the case of -- make sure. No, in general DPL is continuing to collect, if you will, dividends from DP&L.

Q. And we touched on this just a little bit earlier, the amount of tax forgiveness from AES to DPL Inc. has been reduced as a result of the Tax Cut Jobs Act, correct?

A. I just haven't done that analysis, so I don't know. I mean, if the tax rates went down, it's possible that it has reduced the quote value of that. I just haven't looked at it.

EXAMINER PRICE: Under what circumstances would it not directionally move it down?

THE WITNESS: I am being cautious about it, but it depends on which scenario. But, yeah, I mean, in almost all circumstances it would go down.

EXAMINER PRICE: But you do not quantify that.

THE WITNESS: I have spent so much time doing analysis, looking at numbers I try to --

EXAMINER PRICE: I understand that, and you have not quantified how much that benefit has gone down from what you projected before.

THE WITNESS: I have not.

EXAMINER PRICE: Thank you.

Q. (By Mr. Oliker) And is there any provision in the stipulation that requires the DMR to reduce in size if there are changes in the federal income tax rate?

A. In the stipulation?

Q. Yes.

A. I don't know.

Q. Are you familiar with FirstEnergy Ohio?
A. I'm aware of who they are in general.
Q. Do you know if they had a provision similar to the Distribution Modernization Rider?
EXAMINER PRICE: Relevance, Mr. Oliker?
MR. OLIKER: Theirs had a provision that made it become smaller in size when the tax rate changes.
EXAMINER PRICE: How is that relevant to any probative issue here?
MR. OLIKER: It would go to whether this is a benefit or maybe something the Commission should do.
EXAMINER PRICE: You are free to recommend that. I don't know why this witness is the appropriate vehicle for that recommendation. Let's move on.
Q. (By Mr. Oliker) And I can ask the question this way, to your knowledge has the DMR changed in size given that we are in the unique scenario of actually trying the case while the rider is in effect as a result of the tax change?
A. I don't think it has changed in size.
Q. Okay.
EXAMINER PRICE: Can I have the answer

back again.

(Record read.)

Q. Okay. And on page 18, I believe it is on line 9, you says "In such a scenario, DP&L would have insufficient funds to provide safe and stable service to its customers, much less invest in grid modernization. The adverse effects on customers in this case would be substantial and, in my opinion, clearly would exceed the quantifiable costs of the financial integrity charge and Reconciliation Rider."

Regarding this statement you were inferring that DP&L's borrowing costs would go up without the DMR, but am I correct you have not quantified how much DP&L's borrowing costs would go up?

A. I haven't directly. I have some data in this testimony, and I have some data in my DMR-E testimony that was filed in January that go to this question. I didn't directly quantify it.

Q. Okay. And when you said your testimony indicates that without the Distribution Modernization Rider, DP&L may reduce its capital expenditures, for that conclusion you are relying upon the cost per megawatt-hour analysis that we discussed earlier in Figure 4, correct?

A. In part, yeah, but also on -- just also on the rating agencies, rating agency reports who say something like that specifically and also just on the behavior, the sort of documented behavior of firms in financial distress.

Q. And that's because you believe DP&L would be incentivized to avoid making capital investments so it could dividend more money up to its parent, correct?

A. Yes. In order to -- they would be in survivor mode effectively to stave off even more severe financial distress, kind of a downward spiral effect, if you will. They would do their best to delay -- do what they can to delay -- including delayed O&M and CAPEX in order to have enough cash flow to service their debt as much as possible.

EXAMINER PRICE: Let's go off the record.

(Discussion off the record.)

EXAMINER PRICE: Let's break now for lunch until 2 o'clock.

(Thereupon, at 1:17 p.m., a lunch recess was taken.)

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Monday Afternoon Session,
April 1, 2019.

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

Mr. Oliker, you may proceed.

MR. OLIKER: Thank you, your Honor.

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ROBERT J. MALINAK

being previously duly sworn, as prescribed by law, was examined and testified further as follows:

CROSS-EXAMINATION

By Mr. Oliker:

Q. Mr. Malinak, can you turn to page 29 of your testimony.

A. I'm there.

MR. OLIKER: And actually, no. Maybe a better way to do this, may I approach the witness?

EXAMINER PRICE: You may.

Q. And, Mr. Malinak, I have put in front of you The Dayton Power and Light Company's Objections and Responses to Interstate Gas Supply's Tenth Set of Discovery. Does that appear to be the documentation in front of you?

A. Yes.

MR. OLIKER: Your Honor, I would like to mark that document as IGS Exhibit 1002.

EXAMINER PRICE: It will be so marked.

(EXHIBIT MARKED FOR IDENTIFICATION.)

Q. And if you could turn to page -- I guess it is Interrogatory 10-4 and am I correct that this interrogatory refers to page 29 in your testimony, which I just turned your attention to on line 11 through 17?

A. Yeah, this refers to my page 29.

Q. And after identifying the question, it states regarding the statement under A, "Is it DP&L's position that it would dividend money to DPL rather than spending the money on capital expenditures needed to maintain reliable electric service," and then the answer says "DP&L does not know since it does not know what will happen in the future"; is that correct?

A. Yes, I see that.

Q. And the witness responsible, although this refers to your testimony, says Gustavo Garavaglia, does it not?

A. It does.

Q. And in Section B that -- of the question, it states "Is it DP&L's position that it would dividend money to DPL, rather than spending the money on O&M needed to maintain reliable electric service," and in response DP&L's answer would be that it does not know since it does not know what will happen in the future. Is that correct?

A. Yeah, that's what it says.

Q. And, again, the witness was also Gustavo Garavaglia?

A. Correct.

Q. And likewise under Section C it said "Does DP&L agree that if DPL enters bankruptcy, DP&L will continue to provide reliable electric service?" And then under the response it says "DP&L does not know since it does not know what will happen in the future." Is that correct?

A. Yes, that's what it says.

Q. Okay.

MR. OLIKER: Your Honor, at this point in time, although I'm willing to leave the discovery response in the record, I would move to strike page 29, line 11 through 17, given that when posed the question, a response was provided by a different witness which is testifying tomorrow which reflects that someone else has taken ownership over this testimony, and it is not Mr. Malinak.

EXAMINER PRICE: Denied.

Q. (By Mr. Oliker) Mr. Malinak, do you remember earlier when we referred to the CAIDI and SAIFI criteria?

A. Yes.

Q. Am I correct that you do not know whether utilities in Ohio can be fined if they fail to meet their specified reliability criteria?

A. Yes. I don't know that area of the Ohio regulations.

Q. And do you know if a distribution utility in Ohio fails to provide safe and reliable service whether the Public Utilities Commission has the authority to transfer that utility's distribution service territory to another entity?

A. I do not know that provision one way or another.

Q. Okay. On page 56 of your testimony --

EXAMINER PRICE: Can I have a follow-up question? On line 16 you say would -- that "the impact would negatively affect service quality"; is that correct?

THE WITNESS: Yes.

EXAMINER PRICE: Do you equate "would negatively affect service quality" with failure to provide safe and reliable service? Are those two phrases synonyms in your mind?

THE WITNESS: They are not exactly. I mean, the negative -- if negatively affecting service quality could have -- could increase the risk of not providing, being able to provide safe and reliable service, but they're not exactly equivalent. I mean, there is kind of a range of service quality and safety and reliability and, you know, I don't know if you can just draw -- where do you draw that line?

And so it's -- if you are not spending what you need to on CAPEX and O&M, you are going to see, all else equal, a reduction in service quality. Whether that meets the threshold of some kind, that's not something that I have analyzed.

EXAMINER PRICE: Thank you.

Q. (By Mr. Oliker) Okay. Turning to page 56 --

MR. SHARKEY: I would caution you, Mr. Malinak, that lines 1 through 5 are the only public pieces on that page.

Q. (By Mr. Oliker) And then on line 1 and 2, you say "These results are an additional indicator of DPL's weakened financial condition absent the DMR and Reconciliation Rider. In this distressed condition, the Company likely would have restricted access to its revolving line of credit and could be forced into default." When you refer to "the Company" on line 2, you are referring to DPL Inc., correct?

A. Yeah, in this particular passage.

Q. Okay. And there is more I want to talk about on that page, but I think it's confidential. Okay. And on page 58, line 14, where you say "Based on my analysis of capital expenditures by financially distressed firms described above, DP&L likely would reduce or delay such expenditures." This statement refers to the analysis contained in Figures 4 and Figures 5, correct?

A. That's -- it refers to that and any discussion around those figures.

Q. And on page 59 where you say "Management and regulators' attention and effort would be diverted from their normal duties aimed at fulfilling customers' needs to dealing with the financial distress," would you agree that this case is not the first time DP&L has claimed financial distress?

A. By this case, you mean the -- the Amended Stipulation?

Q. Yes.

A. Yeah. I mean, I -- I believe it was

other cases that I began working on before this one which addressed the financial issues that DPL and DP&L were facing so -- and those were before this case.

Q. And regulators' attention was required in those -- in that case, correct?

A. Yeah. I mean, the regulators were involved in those matters.

Q. Regulators are attentive to this case too as well, right?

A. They are.

Q. And regulators will have to be attentive to a DMR extension case if the Stipulation moves forward, correct?

A. That's true and there would be a lot more attention and effort required if the Company does not get a DMR and goes into worse -- worse financial distress.

EXAMINER PRICE: When you say "the Company," you mean DPL?

THE WITNESS: The combined entities because if DPL has to declare bankruptcy or goes into default, the two companies are joined at the hip. I mean, we know that from various evidence including the refinancing of the $445 million of debt which was done in the high yield market. That was DP&L that had to do that back in 2016. And right before the hearing last year -- two years ago, S&P downgraded both entities together, and so they are -- S&P treats them as combined and Moody's treats them as a link and that's because inevitably the financial substance of it is that they're linked.

EXAMINER PRICE: That was all in the first phase of our proceeding, I believe.

THE WITNESS: Oh, I'm sorry.

EXAMINER PRICE: That's okay.

Q. (By Mr. Oliker) And on page 59 when you say management attention would be diverted, you do not know specifically if DP&L would be classified as management in this statement, correct?

A. I don't have a specific person in mind; but, you know, in a financial distress situation, folks like your CFO, your financial group, your CEO, senior management would most certainly have some of their time diverted, a lot of their time diverted.

Q. And you do not have an engineering background, correct?

A. No.

Q. And at page 59 when you state "The increased cost of debt at DP&L would increase

electric rates" -- let me restate that. I'm sorry.
On page 59, on line 4, you state "The increased cost of debt at DP&L would increase electric rates." You don't know if DP&L can increase its distribution rates to account for increased borrowing costs without filing a rate case, correct?
A. Yeah. This is kind of an all else equal thing. I don't know exactly when the increased costs to debt might increase rates, but it's almost inevitable that over time it will.
EXAMINER PRICE: You are saying in the long run it will result in increased rates.
THE WITNESS: And it could be near term too, but it depends on how rates get adjusted, which I don't know, but -- and, you know, if the utility were to fall on super hard times, it won't be forgotten by the markets. I mean, it's something that can last a long time.
Q. (By Mr. Oliker) And I think earlier we established that DP&L's current long-term debt balance is about $594 million?
A. I think that's right. I think that's in this interrogatory response.
Q. And you can take a moment to flip through and see if you can refresh your recollection. Maybe

I can turn you to Interrogatory 10-12.

A. Yeah, page 17.

Q. And according to this response, the long-term -- total long-term debt is 593.77 million as of the date of the interrogatory?

A. That appears to be the case, yes.

Q. And would you agree that for each 100 basis point increase in DP&L's borrowing costs, that would result in an additional $5.9 million per year?

A. I think that math works.

Q. And --

EXAMINER PRICE: Mr. Sharkey kindly has not objected this far to the use of these interrogatories. Have you seen these before?

THE WITNESS: I have.

EXAMINER PRICE: Okay. Thank you.

Q. (By Mr. Oliker) And on page 59 when you say "DP&L" would likely -- "likely would invest less in service operations, which would reduce the quality of customer service and customer satisfaction," when you say this, you are saying you believe DP&L will try to reduce the expenses and capital expenditures to create additional cash flows, correct?

A. Correct.

Q. Could you agree over the long term DP&L's

investment in additional capital assets could ultimately permit DP&L to dividend more money up to the parent company simply by growing the rate base?

A. I mean, that's abstracting from the fact if they -- if they stop -- if they instead spend money on CAPEX and DPL Inc. has to declare bankruptcy or goes into severe financial distress, you know, it's not -- over the long run, you know, it's unclear what will happen exactly. But, yeah, if a utility invests in -- more money in CAPEX, there will be a cash flow in later years. But DPL and DP&L need cash flow now.

Q. And we've been talking about some of the assumptions in your financial calculations. Am I correct that your analysis did not consider that DP&L might earn shared savings revenue as a result of its energy efficiency portfolio plan case?

A. I don't -- I don't recall explicitly modeling that. I have total revenue numbers that I work from, and I know the major elements of those, but I don't know specifically what you are referring to.

Q. And to the extent the DMR and the Reconciliation Rider is not authorized, would you agree that AES Corporation would have to decide whether to provide an equity injection to DPL Inc. or whether to allow DPL Inc. to file for bankruptcy protection?

A. I mean, I think there are -- there's a whole range of different things that AES could try to do. We talked about trying to get forbearance from their lenders and making some sort of arrangement to try to have the entity survive short of injecting equity or declaring bankruptcy, but so I don't really -- you know, I don't accept it's one or the other.

Q. Do you know if DPL Inc. is self-forbearance on any of the loans it's taken out?

A. I'm generally aware that they are negotiating with their creditors frequently; and, you know, one of the potential outcomes of having a DMR is that, you know, even in -- even with the DMR in some instances, it's possible that they would violate a covenant but with the DMR there is -- there has been talk of possibly having -- being in a better negotiating position with lenders.

Q. So without the DMR do you know if DPL Inc. has obtained any commitments from creditors to forbear portions of owed debt?

A. I don't know that one way or another.

Q. And if DPL Inc. went to bankruptcy court, would you agree that AES Corporation would likely end up with its equity balance being completely set to zero?

MR. SHARKEY: I am going to object, your Honor. It's speculative and calls for legal conclusions.

EXAMINER PRICE: Sustained.

MR. OLIKER: Your Honor, is the order from the Bench based upon speculation or legal conclusion, if I may ask?

EXAMINER PRICE: Both. It's highly speculative and calls for him to make a legal conclusion regarding the outcome of bankruptcy court.

Q. (By Mr. Oliker) Given the potential outcomes of a bankruptcy filing, would you agree that the fear of losing its entirety of its investment in DPL Inc. would provide a strong reason for AES to provide an equity injection into DPL?

MR. SHARKEY: Objection, your Honor. It's calling for Mr. Malinak to testify as to what AES may or may not do. I think it's beyond the scope of this case, and it's also speculative.

MR. OLIKER: Your Honor, I am simply asking whether there is an incentive.

EXAMINER PRICE: Well, that's not what you asked so if you want to rephrase it as an incentive, that would be fine but what you asked was AES's state of mind which he cannot testify to.

Q. Well, given that clarification I can restate the question. Mr. Malinak, would you agree that the potential of losing its -- entirety of its investment in DPL Inc. would provide an incentive for AES Corporation to provide an equity injection to DPL in -- when there is the potential for bankruptcy filing?

A. No. On a net basis, I think I mentioned this earlier, that there's something called the debt overhang problem. Any equity infusion that AES would make would immediately become worth less because effectively it would be going to the debt holders to increasing the value of the debt, okay? So that would counteract any incentive to try to preserve whatever equity value they have. And finance and economics literature suggests that the debt overhang problem is a much bigger problem.

Q. And that because you believe that in the absence of the DMR and the Reconciliation Rider, the amount of debt that resides at DPL Inc. is greater than the value of DP&L?

A. No. First of all, it's the debt that resides at the combined entity that matters. And -- and if AES were to put more equity in, it would almost be like a transfer payment of a substantial portion of that equity contribution that would be transferred to the debt holders versus going into a restructuring and the creditors getting pennies on the dollar and them taking the loss.

Q. And we've talked about the Reconciliation Rider or the RR from time to time. Would you agree that it pertains to a Purchase Power Agreement with the Ohio Valley Electric Corporation?

MR. SHARKEY: Objection. He hasn't really established any foundation Mr. Malinak knows the nature of any types of agreements between the Company and OVEC.

MR. OLIKER: Your Honor, he talks about the RR throughout his testimony. I am asking if he knows.

EXAMINER PRICE: He can answer if he knows.

A. I don't know all the details of the arrangement. I have an understanding of the nature of the Reconciliation Rider as being almost like a true-up. If the costs of the OVEC energy are greater than market, then that difference gets added to rates. If market prices were to rise above the OVEC price, then they would be a reduction to rates. That's my understanding of the way that the Reconciliation Rider operates.

Q. And I think you said this in your answer, you agree that if the market-based revenues earned by DP&L from reselling OVEC into PJM are less than the costs that are paid to operate OVEC, the Reconciliation Rider would permit DP&L to recover above-market costs by definition.

A. Well, I wouldn't put it that way. I would say that the rates would be higher in that setting, but then they would also be lower if it goes the other way, so it's like the Reconciliation Rider is exactly that, it's a reconciliation of the recognizing of the OVEC arrangement, so it's almost like a hedge.

Q. And I'm focusing simply on the situation where the Reconciliation Rider is a charge and that scenario the Reconciliation Rider is recovering above-market cost, correct?

A. Well, the difference between the -- if you think of PJM as the market and OVEC, you know, the OVEC costs are higher than the PJM costs, so in that sense you could call it above market, but then sometimes it will be below market.

Q. Do you know of any circumstances where OVEC in the past nine years has been less expensive than the market?

A. I have not looked at those data.

Q. And you claim without the DMR DP&L would have an incentive to forgo capital expenditures, but you have not done any analysis of any normal needed levels of maintenance or capital expenditures that DP&L would forego; is that correct?

A. Yeah. I mean, I think that the way I characterize it is, you know, the combined entities, if you will, would have an incentive to -- for DP&L to reduce CAPEX and O&M in order to meet their debt service requirements in order to try to stave off more severe financial stress. And that's a little bit different than what you were describing.

EXAMINER PRICE: But do you believe they will be able to invest in grid modernization, rolling out AMI meters, for example, or SmartGrid in the absence of the DMR?

THE WITNESS: I don't believe so. They'll be struggling and not in a position, I think, to do that.

EXAMINER PRICE: Thank you.

THE WITNESS: There's a significant amount of debt to be refinanced and rolled over and.

EXAMINER PRICE: And the costs of grid mod are considered.

THE WITNESS: They are and any revenues from grid mod are in the out years. The DMR is a temporary charge that creates -- that primes the pump, if you will.

Q. (By Mr. Oliker) Okay. Let's go back to Figure 4 in your testimony. Am I correct that under Baa1, you've included Oncor Electric Delivery?

A. I think that was one of them that you read to me earlier.

Q. And Oncor is located in Texas, right?

A. That sounds familiar. I don't know for sure but that sounds like it very well could be right.

Q. And at the time you performed this analysis, Oncor's parent company, Energy Future Holdings, was in the middle of the largest bankruptcy in the history of the electric utility industry, correct?

A. I think that the electricity futures holding, or whatever it is, is the successor to TXU.

I think -- I know they went bankrupt. I didn't know it was right during this period.

MR. OLIKER: And, your Honor, may I please approach?

EXAMINER PRICE: Could I have the question and answer back again.

(Record read.)

EXAMINER PRICE: Are you simply agreeing with counsel's representation, or is it your knowledge that the bankruptcy was occurring while you were preparing this?

THE WITNESS: Oh, yeah. I did not know that the bankruptcy was in process when, but I knew that TXU went bankrupt.

EXAMINER PRICE: Okay. You may approach, Mr. Oliker.

MR. OLIKER: Thank you, your Honor. And I would like to mark for identification as IGS Exhibit 1003 --

EXAMINER PRICE: So marked.

MR. OLIKER: -- which contains a Moody's Investors Service rating from April 29, 2014.

(EXHIBIT MARKED FOR IDENTIFICATION.)

Q. Mr. Malinak, am I correct -- I think you told me earlier that Figure 4 and Figure 5 was taken from Moody's website and credit ratings of these utilities?

A. I don't think they come from Moody's website. I think we get them from either SNL or Bloomberg, but it's Moody's -- Moody's is the rating agency. These are Moody's ratings. They differ somewhat from Fitch and S&P at times.

Q. But Moody's is the source of the credit rating information that the other entities may compile, correct?

A. Say that again.

Q. Moody's is the entity that issues the actual rating, correct?

A. Moody's is one of three agencies that issues ratings.

Q. And Figure 4 relies upon Moody's credit ratings as a source, correct?

A. That's correct.

Q. And, therefore, that information would have come specifically from Moody's instead of some other entity?

A. Yeah, through Bloomberg or another information provider.

Q. And does the document that's been put in front of you as IGS Exhibit 1003 appear to be a

Moody's rating action on April 29 of 2014?
A. It does.
Q. And this would be a source for whatever information was compiled on Figure 4, correct?
A. No, not necessarily.
Q. And that is because you've got 2014 and 2015, correct?
A. It's because, yeah, the ratings are -- I believe the ratings that are in place at the end of 2015 and so that's why -- that could be a reason why this is not the operative rating.
Q. Okay. And we can -- we can get to that in a minute, but you would agree that on April 29 Moody's did take action regarding Oncor as a result of the bankruptcy filing of its parent company Energy Future Holdings.
MR. SHARKEY: I am going to object. This is straying pretty far afield of Mr. Malinak's testimony. I don't really believe this is relevant.
MR. OLIKER: Your Honor.
EXAMINER PRICE: I am willing to allow the questions if he can lay a proper foundation which he has not done yet.
MR. OLIKER: Your Honor, this document is from Moody's Rating Service. I believe it can be

administratively noticed as a public document and is a compilation and also the same type of information the witness relies upon in his testimony.

EXAMINER PRICE: Well, actually the witness said he got it from a different source nor have you actually been able to confirm he has ever seen this before.

Q. (By Mr. Oliker) Mr. Malinak, did you ever check --

EXAMINER PRICE: This document, Mr. Oliker.

MR. OLIKER: I am going to take a step back on Figure 4.

Q. (By Mr. Oliker) Did you look at any of the specific rating analysis on any of the entities on Figure 4?

A. I did not. I pulled my data from the data service.

Q. And so you don't know any of the factors that Moody's may have considered at the time that it granted the specific ratings.

A. Well, I have an idea.

Q. And is that because you are familiar with, for example, Energy Future Holdings' bankruptcy filings?

A. No. I'm familiar with the way that Moody's and other rating agencies rate companies if you look at the same kinds of data.

Q. Well, maybe I can ask it this way without going off the document, isn't it true that despite Energy Future Holdings' bankruptcy, $40 billion of debt, it didn't downgrade Oncor to junk?

MR. SHARKEY: Object, foundation and, again, far afield from the testimony.

EXAMINER PRICE: Sustained on foundation. Let's not testify, attempting to insert facts in the record that you are not getting from the witness.

MR. OLIKER: I don't know if he knows that or not, your Honor.

EXAMINER PRICE: Why don't you ask it in a less prejudicial manner.

Q. (By Mr. Oliker) You identified you are familiar with Energy Future Holdings' bankruptcy, right?

A. I'm not familiar with it. I was aware of it because I think they are the successor to TXU.

Q. And in that circumstance, wasn't -- didn't Energy Future Holdings result from a highly leveraged buyout?

MR. SHARKEY: Again, objection, your

Honor.

MR. OLIKER: Your Honor, I can ask leading questions.

MR. SHARKEY: Not leading necessarily. It's speculative, lack of foundation, and irrelevant.

EXAMINER PRICE: He can answer if he knows. If he knows.

THE WITNESS: I actually do know that.

EXAMINER PRICE: There you go.

Q. And by you do know it you mean?

A. I do know that the TXU bankruptcy occurred in part due to -- or in connection with, not due to, but one of the factors was an LBL.

Q. And do you remember the level of debt that existed at Energy Future Holdings?

A. I never got into anything that detailed. I just am aware of it from being in the industry.

Q. Okay. And you do know that one of the subsidiaries of Energy Future Holdings was Oncor Electric Delivery?

A. Yes. Based on this document and --

EXAMINER PRICE: Not based on this document. Absent that document do you know whether Oncor is a subsidiary?

THE WITNESS: I did not know absent this

document. It was not really a relevant factor for this analysis.

Q. And can you tell me one way or another, if you know, whether Oncor's credit rating remained investment grade when its parent company went bankrupt?

A. Well, based on the --

MR. SHARKEY: Let me object, your Honor. We've already established, but for having read this document, he didn't know who Oncor's parent company was. I believe the question is again an attempt by Mr. Oliker to insert facts through a question and is improper.

EXAMINER PRICE: Sustained.

MR. OLIKER: Your Honor, I would move to take administrative notice of Moody's rating action from April 29, 2014, which is a publicly-available document. It is the credit rating at the time, and it's relevant to his testimony involving a public utility whose parent company went bankrupt who Moody's specifically said we're not going to downgrade this company because of its stable cash flows, the regulatory environment, and the other provisions taken to insulate the utility.

EXAMINER PRICE: I am going to deny the

motion to take administrative notice on relevance. You're asking -- you are reading an awful lot into this document. You could have had a witness testify to this document, you chose not to, and that would allow Mr. Sharkey to cross-examine that witness on the conclusions they are reaching from this document. Your request is denied at this time.

MR. OLIKER: Well, then, your Honor, if that's the case, I will make a proffer along with two other documents. And who knows, maybe the witness has seen these ones.

EXAMINER PRICE: Well, you had a deposition. You should know.

MR. OLIKER: Your Honor, we didn't find out the identity of Oncor until the deposition, so I couldn't have done that at the time. May I please approach?

EXAMINER PRICE: You may.

MR. OLIKER: I am actually going to mark two documents. And IGS Exhibit 1004 I will mark the May 13, 2014, Moody's rating action regarding Oncor within the period identified in Figure 4. And as IGS Exhibit 1005, I would like to mark Moody's Investors Service rating action, July 29, 2016, where it says "Moody's upgrades Oncor Electric Delivery Company's

senior secured rating to A3 from Baa1."
EXAMINER PRICE: So marked.
(EXHIBITS MARKED FOR IDENTIFICATION.)
Q. (By Mr. Oliker) And, Mr. Malinak, have you seen the Moody's action on Oncor at May 13, 2014?
A. I have not seen this.
Q. And you are not aware -- can you turn to IGS Exhibit 1005.
A. Which one is that?
Q. And that is the July 29, 2016.
A. Yep. I'm looking at it.
Q. And have you reviewed the Moody's action on July 29 of 2016?
A. Not before today.
Q. And could you then clarify for the record where you obtained the rating information on Figure 4 that says it relied upon Moody's?
A. Yeah. I believe we used either Bloomberg or SNL to get that, but I -- it was a service. We didn't go to Mood -- specific Moody's reports, so it would have been -- would have been one of those two, I think.
Q. Where do you think they got the information?
A. I don't know, probably from Moody's or

from public -- published sources like these -- these things. For example, you can see on this July 2016 it says the upgrade from A3 -- to A3 from Baa1. Baa1 is where I have them on my chart. But this other one you gave me is an action in May 2014, and it is still Baa3, so it's like there is some missing link here. At some point they were upgraded to Baa1 probably at the 2015 or during 2015 so these don't seem like a complete set here.

Q. Okay. And --

A. But it's consistent with my -- where I have them on my chart.

MR. OLIKER: Again, your Honor, I would move to take administrative notice of the documents which now he has been talking about in the record selectively.

EXAMINER PRICE: Mr. Sharkey.

MR. SHARKEY: I would oppose administrative notice, your Honor. Just because they are a document that is available on a website doesn't make them self-authenticating; and as you stated in overruling his prior motion, he could have had a witness, attached these to -- to his testimony, and put them into the record that way and giving me an opportunity to cross those witnesses on the document.

EXAMINER PRICE: I am going to be consistent with my prior ruling and deny administrative notice for these two documents, but we will accept your proffer.

MR. OLIKER: And to be clear, your Honor, because I don't think I made my proffer completely at this point, I will make it again.

EXAMINER PRICE: Sorry. You've got more.

MR. OLIKER: IGS Exhibits 1003, 1004, and 1005 are publicly-available documents which provide the source information that was relied upon by Mr. Malinak in his testimony; therefore, they should be permitted into the evidence. And if those documents had been permitted, it would become quite evident that Oncor, a public utility with a parent company in the middle of bankruptcy, and at the time the parent company was rated as being junk, although Oncor was not because I will say in the words of Moody's --

EXAMINER PRICE: You want to repeat an out-of-court statement for the truth of the matter asserted; is that correct?

MR. OLIKER: No. Your Honor, I am offering it as the relevance and for my proffer.

EXAMINER PRICE: Okay.

MR. OLIKER: And the very reason why it's relevant is self-evident. It says the affirmation of Oncor's Baa3 senior secured rating and stable rating outlook reflect our belief that the ring fencing provisions will sufficiently insulate Oncor from any bankruptcy reorganization that affects its parent or affiliates. Oncor's primary regulator, Public Utility Commission of Texas, remains supportive of Oncor's long-term credit quality and review. Oncor's suite of approved regulatory cost mechanisms at the time of recovery approved incurred costs and investments favorably.

Oncor maintains adequate sources of liquidity to withstand any modest financial impacts resulting from the bankruptcy filings and potential writeoff of approximately 150 million will not impact Oncor's rating of the stable rating outlook.

And for that reason I believe the document is highly relevant and should be admitted. And likewise the additional upgrades contained in the May 2014 filing which confirmed the Oncor credit rating of investment grade and the July 2016 filing which upgraded Oncor to A3 are all relevant given that its parent company was in the midst of a bankruptcy 10 times the size of the one that DPL Inc.

would go into if that were to occur.

EXAMINER PRICE: We will accept your proffer, but I will reaffirm my previous ruling that these documents, you have not demonstrated their relevance. You have also demonstrated you are relying upon them for the proof of the matter asserted which would make them hearsay. You are not relying upon the data compilation exception because what you are talking about here is why Moody's made the ruling rather than what the actual credit rating was.

And, now, we will move on to the next topic.

MR. OLIKER: Your Honor, I don't believe I said that. I do believe I said the credit ratings were important given that we know that --

EXAMINER PRICE: You certainly said that. You said why they -- you argued why they made the credit ratings which is argument of an out-of-state court statement you are offering for the proof of the matter asserted. Why did they make the ratings? That he -- that is the statement you are trying to get in.

MR. OLIKER: I am also trying to get in that they were simply investment grade while the parent was in bankruptcy.

EXAMINER PRICE: I understand that.

MR. OLIKER: Which I think of as little different but I'll leave it at that.

EXAMINER PRICE: Well, you didn't limit yourself to that, so you felt like you would make the larger ask, and it's been denied. I think it's time to move on.

MR. OLIKER: Okay.

Q. (By Mr. Oliker) And you would agree, Mr. Malinak, that ring fencing may insulate a company from the impacts of its parent company.

A. You know, hypothetically I have an understanding of ring fencing that's not a legal understanding. It's just a financial and economic understanding if -- my understanding of that term is that it's legal protection that was put in place to insulate, make an entity bankruptcy remote, and whether or not that ends up being the case is often a matter of dispute but that that would be the purpose of it in my laymen's understanding.

Q. And your testimony references DP&L's rate case, correct?

A. Yes, I believe so.

Q. Okay. Actually just take a step back.

If a company had ring fencing provisions, you would agree that that would be reviewed as credit positive from a rating agency perspective?

MR. SHARKEY: Just object, your Honor. It is not clear what ring fencing refers to. That's a phrase that means different things to different people. Object. It's vague.

EXAMINER PRICE: I am going to overrule. He can explain why he does or does not think ring fencing would be credit positive depending on what type of ring fencing mechanism he is referring to.

A. It's potentially a credit positive. Again, it depends on how effective it is and that's outside of my scope on my understanding, my expertise.

Q. Are you familiar with any example where Moody's has maintained the investment grade credit rating of a subsidiary due to ring fencing when the parent company went into bankruptcy?

A. I'm not specific -- I am not aware of any specific instance of that.

MR. OLIKER: Okay. And may I approach, your Honor?

EXAMINER PRICE: You may.

MR. OLIKER: As IGS Exhibit 1006, I would like to mark The Dayton Power and Light Company Distribution Rate Case Book I-Application and Supplemental Volume 1 of 14.

EXAMINER PRICE: It will be so marked.

(EXHIBIT MARKED FOR IDENTIFICATION.

Q. And am I correct, Mr. Malinak, the document that's put in front of you is the application that DP&L filed and you reference in your testimony?

MR. SHARKEY: Objection, your Honor. There is no evidence that Mr. Malinak has seen this document.

EXAMINER PRICE: Sustained. Please lay a proper foundation, Mr. Oliker.

Q. (By Mr. Oliker) Mr. Malinak, did you actually review DP&L's rate case application?

A. I don't recall having done so.

Q. How did you become aware of DP&L's application if you didn't review it?

A. I remember hearing from counsel that there was a distribution rate case pending, and then for purposes of my analysis, I had some -- there were assumptions in my analysis about the outcome of that rate case.

Q. Okay. Before -- putting the document

aside for a second, before you filed your testimony, did you ask DP&L if it has any ring fencing provisions?

A. I didn't -- I didn't ask that specific question.

Q. And I think earlier we discussed that you don't know what a corporate separation plan is, right?

A. I'm sorry. Ask that again, please.

Q. You don't know what a corporate separation plan is?

A. I know that -- I don't know what you mean by a corporate separation plan.

Q. Do you know what DP&L's corporate separation plan requires?

A. I don't know what it requires in every particular but my -- I have an understanding that they -- that they were going to be separating their generation.

Q. Okay. Is that the extent of your knowledge of what a corporate separation plan is?

A. When you are saying a corporate separation plan, there could be a thousand different types of corporation separation plans. It's --

Q. Do you know if there is a formal document that sets forth DP&L's obligations regarding its competitive and noncompetitive businesses and whether or not they may subsidize each other?

A. I'm not specifically aware of those -- of provisions to that effect.

Q. And do you know what a cost alignment and allocation manual is?

A. No.

Q. Do you know what a cost allocation manual is?

A. A cost allocation manual?

Q. Do you know if DP&L has a cost allocation manual?

A. I have a vague memory that they -- that there is such a manual.

Q. Do you know --

A. But it's from years ago before the Amended Stipulation.

Q. Do you know what it does?

A. I know -- I mean, but I remember vague -- generally vaguely is that there was a manual. There were some internal documentation on the -- how to allocate costs among the various businesses that were related businesses, DPL and DP&L. That's my vague recollection.

Q. Okay. And to follow up, this is a slight tweak, in an earlier question I asked you, I think we demonstrated you didn't ask DP&L if it has any ring fencing provisions in place, and I'll change the question a little bit. Do you know if DP&L has any ring fencing provisions in place?

A. Okay. I don't have -- I have a -- again, a somewhat uncertain memory that -- that they don't have -- you know, I have in my memory that they don't have strong ring fencing provisions. But, again, that's based on just, you know, what I remember from the last five years.

Q. And you also don't know if DP&L represented to the Commission in its distribution rate case that it had ring fencing provisions.

A. I don't know what they represented.

Q. Okay.

MR. OLIKER: If I could have one minute, your Honor, I might be ready for the confidential session, but I want to check over my notes.

EXAMINER PRICE: Take your time.

Q. Just a few more questions in the public section. Mr. Malinak, you are aware that AES -- first, are you aware which year AES acquired DPL Inc.?

A. Gosh, not the precise year. I think it was in the 2010 range, plus or minus, somewhere right in there, but it's been a while since I've looked at that.

Q. And since the time that AES acquired DP&L Inc., would you agree DPL Inc. has provided no cash equity injections to DP&L?

A. I haven't looked specifically at that issue, so I don't know for sure. I know that through the Amended Stipulation they have done -- they have provided tax forgiveness, and they have forgone dividends and the impact of that. Some of that has kind of a cash flow impact. The way of increasing cash flow, if you are not paying tax out of the organization, then you're -- you're keeping the cash so.

MR. OLIKER: Okay. And could I have that answer read back to me.

EXAMINER PRICE: You may.

(Record read.)

MR. OLIKER: Your Honor, I would move to strike his answer. I asked if DPL Inc. has provided any cash injections to DP&L, not whether or not they have foregone cash or have incremental impact -- I asked did they give them cash, and he did not respond.

EXAMINER PRICE: You said cash equity injections which I think opened the door for his response so denied.

Q. (By Mr. Oliker) Would you agree that DPL Inc. provided no direct cash injections to DP&L since the acquisition from AES?

A. Okay. You are asking Inc. to the DP&L.

Q. Yep.

A. And the answer is I have not examined that -- that directly.

MR. OLIKER: Okay. I think I am ready to go into confidential session, your Honor.

EXAMINER PRICE: Okay. At this time we will go into confidential session.

(CONFIDENTIAL PORTION EXCERPTED.)

(OPEN RECORD.)

EXAMINER SCHABO: Mr. Sharkey?

MR. SHARKEY: Yes. Thank you, your Honor.

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REDIRECT EXAMINATION

By Mr. Sharkey:

Q. Mr. Malinak, do you recall that Mr. Oliker asked you some questions about the TCJA?

A. Yes, I do.

EXAMINER SCHABO: Are we back in public?

MR. SHARKEY: Yes, we are back in public.

EXAMINER SCHABO: Sorry. Go ahead.

A. I do remember.

Q. Do you believe that the DMR amount should be reduced in light of the passage of the TCJA?

A. No, I do not. By doing so would defeat the purpose of the TCJA and I would just add that the TCJA while it does produce a higher after-tax DMR amount, there are other impacts of the TCJA which are negative on utilities and on DPL and I haven't done the analysis in or looked at it in detail, but it's probably a net negative.

Q. What were the DMR funds to be used for, Mr. Malinak?

A. Debt, pay down debt service, financial integrity.

Q. And if the DMR amount was reduced to the TCJA, what effect would that have on the ability of DP&L to pay down that debt?

A. It would reduce -- it would reduce the effectiveness of the DMR.

Q. Do you recall that Mr. Oliker also asked you some questions about some developments since your testimony that had a positive financial effect upon The Dayton Power and Light Company and DPL Inc.?

A. Yes.

Q. Have there been also since your testimony was filed back in 2017 negative impacts upon DP&L and DPL Inc.?

A. Yes. A number including distribution revenues that are significant -- are 30, 40 million dollars or so less than were in my projections originally. I understand there's been increased -- at least from a cash flow perspective increased transmission CAPEX, and they've also -- I said this before, you divest -- you shut down coal plants, if they are negative free cash flow, that's a positive, but sale of the other coal plants or transfer out and sale, the transfer out will reduce the operating cash flows of DP&L significantly which is a metric that the rating agencies look at. You do get the proceeds from sales which can be used to pay down debt and that offsets it, but the loss of operating cash flow can be significant. If you look at the statement of cash flow by business unit section and you go to generation operating cash flow, okay, you're talking [*************REDACTED**************] et cetera. Now, that includes Stuart and Killen. I haven't sort of flyspecked it as to those that were sold, but they will -- the ones that sold theoretically have solid operating cash flows. Otherwise, they could not have been sold so that's a negative.

MR. SHARKEY: Your Honor, Mr. Malinak read into the record some information that's confidential. Could I ask to file a motion that it just be moved from the public transcript in the confidential transcript?

EXAMINER SCHABO: Yes. That motion will be granted.

MR. SHARKEY: Thank you, your Honor.

THE WITNESS: I'm sorry, your Honor.

Q. (By Mr. Sharkey) Mr. Malinak, net effect bottom line is DP&L's need for a DMR greater or lesser now than in 2017 with regard to your testimony?

A. It's clearly greater.

Q. And without getting into the numbers, can you give me a quick overview as to why that is?

A. Well, because there's been a number of net negative effects of, you know, what I mentioned, the distribution revenues, I mentioned the -- I believe there was some unexpected increased CAPEX that negatively affected near term cash flow.

There was again the loss of the operating cash flow, the generation. As I sit here today, I know that there were other negative impacts that I'm just not remembering but there were a number of them. And so maybe -- maybe market conditions have not been as good as hoped for. And so all of those things have led them to need a DMR even more so than when I did my Amended Stipulation.

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

EXAMINER SCHABO: Mr. Oliker?

MR. OLIKER: Thank you, your Honor.

For purposes of recross, may we go off the record for a second?

(Discussion off the record.)

EXAMINER SCHABO: Let's go back on the record.

Mr. Alexander, do you have any recross? You have to sit in the middle next time.

MR. ALEXANDER: I just heard something unexpected. No, no questions, your Honor. Thank you.

EXAMINER SCHABO: Thank you.

Ms. Bojko?

MS. BOJKO: No, thank you, your Honor.

EXAMINER SCHABO: Ms. Fleisher?

MS. FLEISHER: No, thank you.

EXAMINER SCHABO: Ms. not Harris anymore?

MS. GRUNDMANN: No questions.

EXAMINER SCHABO: Ms. Whitfield?

MS. WHITFIELD: No questions, your Honor.

EXAMINER SCHABO: Mr. Michael?

MR. MICHAEL: No questions.

EXAMINER SCHABO: Mr. Pritchard?

MR. PRITCHARD: No questions.

EXAMINER SCHABO: Ms. Petrucci?

MS. PETRUCCI: No, thank you.

MR. OLIKER: Thank you, your Honor.

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RECROSS-EXAMINATION

By Mr. Oliker:

Q. Follow up on some things that your

counsel had indicated. Regarding the impacts financially on DP&L, you agree when you drafted this testimony, you expected the generation assets to be transferred and not part of the financials of DP&L, although you modeled an integrated utility?

A. Yeah. I understood that was the plan, but I didn't know when it was going to happen and what the details of it were going to be.

Q. Did the Stipulation say when that would happen?

A. I can't remember.

Q. Do you know if there was an application filed before the FERC to transfer the generation at the time the Stipulation was presented to the Commission?

A. I don't recall.

Q. And I think we established, and I don't want to talk about the numbers themselves, but I would like to do this in the public record, the -- the projected distribution cash flows that you relied upon had zero value from the DIR, correct?

A. That's correct. We set the DIR to zero.

Q. And when you were looking through the statements of cash flows, did you see a line item for shared savings from energy efficiency? And I don't want you to identify anything else but.

A. Just now? I did not.

Q. And have you followed up with the Company on that question at all?

A. I have not.

Q. And can you do some -- is 4-1/2 percent times 595 million about $26.5 million a year in interest?

A. What were those numbers again?

Q. 4.5 percent times 595 million.

A. Those two numbers multiplied together are about 27 million.

Q. 26.7 million about?

A. 26.8.

Q. Okay. And based upon the current interest rate that DP&L is paying, would you expect the total annual interest to be about $27 million?

MR. SHARKEY: Objection, foundation. Hasn't established Mr. Malinak knows the current interest rate they are paying.

MR. OLIKER: That's fine.

EXAMINER SCHABO: Sustained.

Q. (By Mr. Oliker) Mr. Malinak, has DP&L's annual interest rate been in the 4.5 percent range?

A. I would have to flyspeck the various

numbers but, I mean, I haven't looked -- I don't remember about what it is currently. I mean, I can tell you what I was assuming in my projections, approximately. I mean, I can't tell you the way it averaged without drilling down, but I can tell you a few interest rates on the exhibit.

Q. Okay.

A. And you asked DP&L, correct?

Q. Yes.

A. Yeah.

Q. But my question was more about what's actually happening under the current variable rate rather than what you are projecting, Mr. Malinak.

A. Yeah. I don't know what it is.

Q. Okay. And I am not sure we discussed this earlier, but to the extent DP&L incurs transmission-related capital expenditures, would you agree that it can file a rate case before the Federal Energy Regulatory Commission?

A. You know, I am not an expert on exactly where they can file, but I do know the FERC does regulate transmission, so it would not surprise me if they could file a case related to transmission costs.

MR. OLIKER: Thank you, your Honor. Those are all the questions I have.

Thank you, Mr. Malinak.

EXAMINER SCHABO: Thank you, Mr. Malinak. You may step down.

THE WITNESS: Okay.

EXAMINER SCHABO: Next step would be whether or not you would like to move any of your exhibits.

MR. OLIKER: At this time, your Honor, IGS would move for the admission of Exhibit 1001 and the portions of IGS Exhibit 1002 that were relied upon. I think we may ultimately refer to other portions of that document with Mr. Garavaglia, but for now, I would limit it to the interrogatories that I referenced. And after the cross-examination is completed, I would be happy to do a more accurate document to the extent that this record is reviewed by somebody else other than us.

Does that make sense to you, Jeff?

MR. SHARKEY: Yes, I understand it.

MR. OLIKER: Yeah.

MR. SHARKEY: Just make sure I understand, you are going to wait to determine how much of 1002 you are moving in until you completed cross-examination --

MR. OLIKER: Right.

MR. SHARKEY: -- of DP&L's other witnesses?

MR. OLIKER: I would move it now but just the interrogatories we've talked about.

MR. SHARKEY: Okay. Understood.

EXAMINER SCHABO: Any objection to that?

MR. SHARKEY: I have no objections on 1002, your Honor.

EXAMINER SCHABO: Okay.

MR. OLIKER: And I would renew my request for administrative notice of the Moody's documents, but without going down that road again, I will leave it at that --

EXAMINER SCHABO: Okay.

MR. OLIKER: -- which would be Exhibits 1003, 1004, and 1005 but recognizing the Bench is unlikely to change that ruling.

EXAMINER SCHABO: The Bench is very unlikely to change that ruling right now. Were there any other objections on 1001 or those portions of 1002 that were discussed today?

None? By seeing none, 1001, 1002 to that degree will be admitted.

(EXHIBITS ADMITTED INTO EVIDENCE.)

MR. OLIKER: And I'm not going to move

Exhibit 1006 at this time. I will move IGS 1007 and 1008 but not 9 because we did not talk about it.

EXAMINER SCHABO: Objections?

MR. SHARKEY: No, your Honor.

EXAMINER SCHABO: None?

Seeing none, 1007 and 1008 will be admitted.

(EXHIBITS ADMITTED INTO EVIDENCE.)

EXAMINER SCHABO: All right. Let's go off the record.

(Discussion off the record.)

EXAMINER SCHABO: Let's go back on the record.

See everybody tomorrow at 9:00 starting with Mr. Garavaglia.

(Thereupon, at 4:23 p.m., the hearing was adjourned.)

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CERTIFICATE

I do hereby certify that the foregoing is a true and correct transcript of the proceedings taken by me in this matter on Monday, April 1, 2019, and carefully compared with my original stenographic notes.

____
Karen Sue Gibson, Registered
Merit Reporter.

(KSG-6721)

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