

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

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

:

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

:

In the Matter of the :
 Application of The Dayton :
 Power and Light Company :
 for Approval of Certain : Case No. 16-397-EL-AAM
 Accounting Authority :
 Pursuant to Ohio Rev. Code:
 §4904.13. :

- - -

PROCEEDINGS

before Mr. Gregory Price and 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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VOLUME VI

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On behalf of The Kroger Company.

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By Ms. Madeline Fleisher
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On behalf of the Environmental Law &
Policy Center.

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On behalf of Honda of America
Manufacturing, Inc.

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1 Monday Morning Session,

2 April 1, 2019.

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

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

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

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

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

24 EXAMINER PRICE: Thank you.

25 MR. McNAMEE: On behalf of the Staff of

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

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

7 MR. SETTINERI: Good morning, your
8 Honors. On behalf of the Retail Energy Supply
9 Association, Michael Settineri, Gretchen Petrucci,
10 with the law firm of Vorys, Sater, Seymour & Pease,
11 52 East Gay Street, Columbus, Ohio 43215.

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

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

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

23 MS. WHITFIELD: Good morning, your
24 Honors. On behalf of the Kroger Company, Angela Paul
25 Whitfield, the law firm Carpenter Lipps & Leland,

1 280 North High Street, Suite 1300, Columbus, Ohio
2 43215.

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

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

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

18 MS. FLEISHER: Madeline Fleisher, on
19 behalf of the Ohio Environmental Law & Policy Center,
20 21 West Broad Street, 8th Floor, Columbus, Ohio
21 43215.

22 MS. GRUNDMANN: Good morning. It is
23 Carrie Grundmann here with Spilman, Thomas & Battle,
24 on behalf of Wal-mart Inc., 110 Oakwood Drive, Suite
25 500, Winston-Salem, 27103.

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

4 MS. GRUNDMANN: I'm good right here.

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

8 (Witness sworn.)

9 EXAMINER PRICE: Thank you.

10 Mr. Oliker, please proceed.

11 Please turn on your microphone,

12 Mr. Malinak.

13 - - -

14 ROBERT J. MALINAK

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

17 CROSS-EXAMINATION

18 By Mr. Oliker:

19 Q. Good morning, Mr. Malinak.

20 A. Good morning.

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

25 A. I don't.

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

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

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

10 A. Again, not formal outside of my firm.

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

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

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

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

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

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

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

6 Q. Do you recall their names?

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

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

12 A. Not specifically, no.

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

15 A. Not specifically, no.

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

18 A. At a general and economic level, yeah.

19 Q. And let me know if you agree with the
20 following very high level summary of the regulatory
21 compact. Would you agree under the regulatory
22 compact the regulator grants the company a protective
23 monopoly, essentially a franchise, for the sale and
24 distribution of electricity to customers in its
25 defined service territory. In return the company

1 commits to supply the full quantities demanded by
2 those customers at a price calculated to cover all
3 operating costs plus a reasonable return on the
4 capital invested in the enterprise?

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

10 Q. I did.

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

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

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

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

24 A. I mean, that's one -- that's one of
25 the -- that's a primary goal. I mean, sometimes

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

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

12 A. Generally, yes.

13 Q. Can you describe what it is?

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

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

5 A. Not specifically, no, with that detail.

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

9 A. Generally, yes.

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

12 A. Generally, yes.

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

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

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

25 A. I think that it is -- I know that it goes

1 into the ratemaking process, and I don't remember
2 exactly how it's involved.

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

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

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

12 A. It's been around a long time.

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

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

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

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

1 debt.

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

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

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

12 A. That's correct.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17 A. Yeah, that's my understanding.

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

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

24 Q. And are you familiar with the DIR?

25 A. The Distribution Investment Rider?

1 Q. Yes.

2 A. Okay. In general, yes.

3 Q. Okay. Are you okay if we call that the
4 DIR?

5 A. I am.

6 Q. Would you agree that the DIR recovers
7 capital investment?

8 A. My understanding is that it is designed
9 to cover -- to collect distribution investments that
10 I guess qualify, qualifying distribution investments,
11 in between rate cases.

12 Q. And by qualifying distribution
13 investments, you mean capital investments, correct?

14 A. My understanding that is a component.

15 Q. Okay. And, therefore, the DIR will
16 include a return of and return on capital investment?

17 A. That's my general understanding.

18 Q. And you have submitted financial
19 projections in this case, correct?

20 A. Yeah. I have submitted an analysis that
21 relies on a set of financial projections that were
22 provided to me by the company. I've made certain
23 adjustments to them to conform to the type of
24 analysis I was doing.

25 Q. Okay. And for purposes of your analysis,

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

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

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

9 A. That's my general understanding, yes.

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

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

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

20 A. What do you mean by "actual"?

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

24 A. What do you mean by "actual"?

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

1 said it had in the distribution rate case?

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

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

7 A. I don't.

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

11 A. Could you ask that again?

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

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

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

25 A. Oh, really? Okay.

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

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

8 EXAMINER PRICE: Yes.

9 (Discussion off the record.)

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

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

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

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

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

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

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

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

3 MR. SHARKEY: I'm sorry?

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

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

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

10 THE WITNESS: Can I answer this question?

11 MR. SHARKEY: Level of debt at the end of
12 2016 is a public number, your Honor, so we don't have
13 any objection.

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

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

22 Q. (By Mr. Olikier) Okay.

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

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

1 360 million, correct?

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

4 Q. Yes.

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

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

11 A. I don't.

12 Q. Do you remember what it was?

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

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

16 A. Yes, it would be.

17 Q. What was that number?

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

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

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

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

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

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

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

11 Q. Okay. Then let me say it this way, you
12 would agree if the distribution rate case authorized
13 52 percent debt and 48 percent equity capital
14 structure and DP&L happened to have \$750 million of
15 debt and 500 million or less in equity, the capital
16 structure authorized in the distribution rate case
17 was different than DP&L's actual capital structure?

18 A. What do you mean by "actual"?

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

21 A. So their book -- their book --

22 Q. Yes.

23 A. Yeah, the 52/48 would be different than
24 their book capital at the end of -- around the end of
25 2016.

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

8 A. No, not necessarily.

9 Q. Mathematically speaking if a utility has
10 an actual capital structure of 35 percent equity and
11 65 percent debt and the utility is permitted to earn
12 a rate of return as if they had 48 percent equity and
13 52 percent debt, would you agree that the target
14 capital structure with the 48/52 will produce a
15 higher revenue requirement?

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

18 MR. OLIKER: Sure.

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

1 A. A higher revenue requirement than what?

2 Q. A higher total number if you apply it to
3 a rate base, all else being equal.

4 A. No, not necessarily. I mean, you said
5 mathematically?

6 Q. Mathematically, just math -- that's the
7 way the math works out, right?

8 A. Let me try to restate it. So if you --
9 if you have a utility that has a -- that has departed
10 from its target capital structure so it has a 30/70
11 equity-to-debt percentage, okay, and you keep the
12 rates -- rates of return on those, you know,
13 mathematically, if you apply -- if you apply a
14 weighted average cost to capital that's 50/50 versus
15 if you applied a weighted average cost to capital at
16 30/70 and kept the rates exactly the same, okay,
17 which wouldn't make sense, but if you did that, then
18 you would have -- mathematically there would be a
19 different rate of return if you did that.

20 Q. I think you may have not understood my
21 hypothetical, so I will try to do it differently.

22 A. Okay.

23 Q. If the Commission in the distribution
24 rate case permitted DP&L to have a target capital
25 structure of 48 percent equity and 52 percent debt,

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

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

9 Q. Yep.

10 A. Mathematically I think that would work --

11 Q. Okay. Thank you.

12 A. -- work that way.

13 Q. And --

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

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

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

25 Q. If the actual capital structure is 35

1 percent and it's been authorized that the utility can
2 earn 48 percent, would you agree that there is an
3 assumption that there will be equity returns when, in
4 fact, there are not for at least the difference
5 between 35 and 48 percent?

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

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

15 A. The rates of return.

16 Q. The rates of return.

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

20 Q. Okay.

21 A. Economically you should, all else equal.

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

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

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

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

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

16 EXAMINER PRICE: Overruled.

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

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

24 A. Yeah. There is debt that's denominated,
25 if you will, at -- under the -- both organizations

1 but, yes, I look at all the debt of the combined
2 entities.

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

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

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

12 A. Yes.

13 Q. What is your definition of unsecured
14 debt?

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

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

24 A. To my knowledge, the lion share, I think,
25 is seen as unsecured. I can look at my exhibit. I

1 have an exhibit on it, if that would help, but that's
2 my recollection.

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

6 A. Yeah. I am looking in Exhibit 19A and
7 there is also a 19B. These are outstanding debt as
8 of September 30 and this is all -- I got it from my
9 internal data, but I think it's probably public but.
10 My recollection is that if you look at the 2019 and
11 2021 bonds, that those are -- that those are senior
12 unsecured.

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

16 A. I don't actually know that.

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

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

25 MR. OLIKER: May I approach, your Honor?

1 EXAMINER PRICE: You may.

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

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

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

9 A. I did.

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

12 A. It looks like it.

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

15 A. I am there.

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

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

22 A. Yes.

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

25 A. That's my recollection, yes.

1 Q. And you agree that secured debt is viewed
2 as lower risk than unsecured debt?

3 A. Generally it is, yes. It depends on the
4 type of collateral and so forth, but as a general
5 matter, all else equal, it is.

6 Q. And that is because the secured debt is
7 actually secured by specific collateral so in the
8 case of bankruptcy the lender would have specific
9 assets that it could turn to to recover its
10 investment.

11 A. Yes. As a general matter, as long as a
12 collateral has maintained its value, it -- secured
13 debt would be lower risk, and creditors can get their
14 money back better.

15 Q. And you don't know which of DP&L's assets
16 provide security for DP&L's debt, correct?

17 A. I haven't looked at the specific assets,
18 no.

19 Q. And I think you mentioned this earlier,
20 that the mathematical calculations you've provided in
21 your testimony were derived from another set of
22 foundational analysis that was performed by DP&L,
23 correct?

24 A. Yeah. They provided a set of
25 spreadsheets that fed into my model, the numbers from

1 it fed in.

2 Q. And those spreadsheets were financial
3 projections which included projected net income, cash
4 flow, and balance sheets for DP&L and DPL Inc.?

5 A. Yes. It was a pretty complete set of
6 projections, balance sheets, cash flows, income
7 statements, tax assumptions, things like that.

8 Q. And at the time you drafted your
9 testimony, DP&L owned generation assets but had
10 planned to transfer them, correct?

11 A. That's my understanding is they were --
12 that was the plan.

13 Q. But the calculations in your testimony
14 assumed that DP&L still owns generation assets for
15 the duration of the ESP period, correct?

16 A. Yeah, that's correct. There had been no
17 separation or had been no sale of generation assets,
18 so we went with the model we had at the time.

19 Q. And you can't recall whether an earlier
20 case involving DP&L may have also planned for it to
21 transfer its generation assets; is that correct?

22 A. Earlier case.

23 Q. An earlier proceeding.

24 A. And by "planned," what do you mean
25 exactly?

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

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

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

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

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

19 A. When I am doing cash flows --

20 Q. Well, maybe I can restate the question.

21 A. Yeah.

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

24 A. I do.

25 Q. And funds from operations are typically

1 net income plus depreciation and maybe some other
2 smaller items, correct?

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

5 Q. Can you clarify the difference?

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

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

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

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

20 A. Yeah, that kind of thing.

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

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

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

7 A. You mean like an 8-K?

8 Q. Yes.

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

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

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

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

18 A. And you are asking me specifically about
19 the impairment that was taken towards the end of
20 2016?

21 Q. Yes.

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

1 584 million.

2 MR. SHARKEY: Your Honor, those
3 numbers --

4 THE WITNESS: I think that's public.

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

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

9 A. You know my testimony better than I do.

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

13 THE WITNESS: That's unredacted? So
14 unredacted?

15 MR. SHARKEY: Correct.

16 A. Okay. Yeah, so it says here we assumed
17 910 million at one point. There is also 1.354
18 billion as of December 31, 2016.

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

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

24 THE WITNESS: Oh, really?

25 A. Could you repeat the question or reread

1 the question, please?

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

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

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

11 EXAMINER PRICE: We may.

12 (Discussion off the record.)

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

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

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

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

25 A. That would typically be the case. Those

1 chargeoffs would often be run through the income
2 statement and end up affecting equity.

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

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

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

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

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

20 A. That is generally true, yes.

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

25 A. Can I just ask you very quickly when you

1 say "income taxes," are you talking about cash taxes
2 or tax expense?

3 Q. Speaking --

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

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

8 A. Cash.

9 Q. Yes.

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

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

16 A. It does.

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

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

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

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

1 Q. Could you turn to page 128 of your
2 deposition.

3 A. Yes, I'm there.

4 Q. And on line 19 were you asked the
5 question "And would you agree that credit rating
6 agencies look at independent power producers
7 differently than regulated distribution utilities
8 that do not own generation assets?"

9 A. I'm sorry. Where is that?

10 Q. On page 128, line 19. "Answer: Yes,
11 they do look at them differently."

12 A. Okay.

13 Q. Did I read that correctly?

14 A. You did.

15 Q. And that is because regulated
16 transmission and distribution companies are less
17 risky than an independent merchant power company?

18 A. Yeah. Treating the words look at in
19 terms of analyze and incorporate into their work, you
20 know, an independent merchant power company would
21 be -- they would analyze them differently.

22 Q. Okay. And that is because when there is
23 a reduction in earnings for a regulated distribution
24 or transmission utility, if they believe they are not
25 earning their authorized rate of return, they can

1 simply file an application to increase their rates,
2 correct?

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

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

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

17 Q. Have you ever played the Monopoly game?

18 A. You mean the original Milton Bradley?

19 Q. Yes.

20 A. Of course.

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

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

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

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

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

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

11 A. I am not familiar with that exact rider.

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

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

25 Q. Because in that instance they are less

1 subject to volume risk, correct?

2 A. Yes, yeah. In general, yes.

3 Q. And you do not know whether DP&L has any
4 form of a decoupling rider, correct?

5 A. You know, I've seen the word decoupling
6 in various documents, but I don't -- I am not
7 familiar with that rider.

8 Q. And generally speaking is the concept of
9 decoupling to reduce or break the connection between
10 the revenue requirement and the total amount of
11 throughput?

12 A. I don't know specifically, but it sounds
13 like that is a potential interpretation of that --
14 what decoupling is meant -- what is meant by
15 decoupling.

16 Q. And if DP&L had a decoupling rider, that
17 would make it less risky, correct?

18 A. I would want to look at the rider and how
19 it works before I could answer that.

20 Q. And by that you would want to look at the
21 rider to see if it insulated DP&L from fluctuations
22 in the total amount of throughput in its system?

23 A. Or from anything, but yeah.

24 Q. Okay. Would you agree that if DP&L had
25 both a Decoupling Rider and a Lost Distribution

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

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

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

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

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

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

1 flows coming into the utility sooner than they would
2 otherwise.

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

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

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

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

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

25 A. It would depend. I mean, it would depend

1 on whether the utility was in a place that had a high
2 degree of regulatory risk which investors would weigh
3 against the other risks, but, you know, if your whole
4 regulatory risk is constant, then -- then, all else
5 equal, they -- the IPP would be considered a riskier
6 business.

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

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

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

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

1 quantitative factors.

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

4 A. Yes.

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

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

23 MR. OLIKER: Can I have my question two
24 questions ago, which I do think he answered, and then
25 I had a follow-up question? Can I have both

1 questions and answers read back, please, Karen.

2 (Record read.)

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

7 A. Yes, as a general matter.

8 Q. Okay.

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

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

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

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

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

23 Q. And turning to page 34 --

24 A. Of my depo or Amended Stip testimony?

25 Q. Of your testimony.

1 A. I am there.

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

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

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

10 A. Sounds good.

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

13 A. That's the focus, yeah.

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

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

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

23 A. Just generally.

24 Q. Could you give definitions for CAIDI and
25 SAIFI.

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

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

9 A. Yes, not specifically.

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

13 A. Yes.

14 Q. And there are three utilities listed as
15 Baal with capital expenditures that are greater than
16 \$20 per megawatt-hour, right?

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

19 Q. And how many Baal utilities are \$10 per
20 megawatt-hour or less?

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

23 Q. Okay. So --

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

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

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

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

11 A. I don't know.

12 Q. Is it possible?

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

16 Q. Have you done that?

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

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

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

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

1 A. Yes. I think so.

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

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

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

10 A. Yes. I'm there.

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

15 A. Yep.

16 Q. And then "Yes.

17 "Answer: All right. You said the --

18 "Question: Baa3.

19 "Answer: Baa3. Okay.

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

22 A. Yep. That refreshes my memory so.

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

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

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

6 A. That's correct.

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

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

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

15 A. Currently?

16 Q. Yes.

17 A. I don't know.

18 Q. Do you know if they had one in effect in
19 2014-2015?

20 A. I don't know.

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

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

1 this figure.

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

5 A. That's correct.

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

10 A. I'll take your representation.

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

14 A. I don't know.

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

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

22 Q. The answer was "no", correct?

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

25 EXAMINER PRICE: Why is it not relevant

1 to your analysis?

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

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

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

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

25 MR. OLIKER: And just before that I

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

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

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

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

11 A. What types of distribution riders?

12 Q. Capital investment.

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

15 Q. Yes.

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

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

22 A. I don't know that.

23 Q. And under Baal these companies are
24 Connecticut Light & Power, PEPCO, Potomac Electric
25 Power, Commonwealth Edison, Metropolitan Edison, Ohio

1 Edison, and Pennsylvania Power Company; is that
2 correct?

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

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

9 A. You said Baa1?

10 Q. Yes.

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

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

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

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

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

25 Q. And do you know if PEPCO and Commonwealth

1 Edison are both owned by Exelon?

2 A. I know that PEPCO is. Actually I think
3 could be Consolidated Edison is too.

4 Q. I think you meant to say Commonwealth
5 Edison.

6 A. Commonwealth Edison, excuse me.

7 Q. Consolidated is New York, correct?

8 A. Yeah, yeah.

9 Q. Okay. On page 29 you reference -- let me
10 make sure this is public. On page 29, line 6, you
11 mention DP&L's employee count. As you sit here
12 today, is the employee count lower than what's
13 reflected in your testimony?

14 A. I haven't taken a look at that. I have
15 heard that the Company has had -- has reduced its
16 head count but that I just heard in kind of a hearsay
17 way.

18 Q. Okay.

19 A. And that could be wrong. That's just my
20 recollection.

21 MR. OLIKER: Your Honor, could we go off
22 the record for a second?

23 EXAMINER PRICE: Yes.

24 (Recess taken.)

25 EXAMINER PRICE: Let's go back on the

1 record.

2 Please proceed, Mr. Oliker.

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

5 EXAMINER PRICE: Not a problem.

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

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

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

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

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

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

25 Q. But if a deal cannot be worked out

1 regarding some type of forbearance, the defaulting
2 party may seek bankruptcy protection under Chapter
3 11?

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

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

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

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

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

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

21 A. As of what point in time?

22 Q. How about 2016?

23 A. Okay. My recollection is that this is my
24 general recollection is that something like 4 or 5
25 hundred million of it were secured. There might be

1 more and there was -- I think the revolver may not be
2 secured and so sometimes there's a balance on that.
3 But as of the end of 2016, you know, there was 7 -- I
4 don't know if this is redacted or not. I think we
5 agreed earlier it was public, that it was in the mid
6 700 range, and my recollection was the secured
7 portion was less than that.

8 Q. And --

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

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

13 A. Meaning 2019?

14 Q. Yes.

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

25 Q. And do you know whether DP&L's current

1 long-term debt is 594 or 95 million dollars?

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

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

11 I would like to ask you to assume you
12 have two borrowing entities, and in this hypothetical
13 one is DP&L and one is DPL Inc. Let's assume Morgan
14 Stanley provides an unsecured loan to DPL Inc. of
15 \$500 million and let's assume the New York Bank of
16 Mellon provides a \$200 million loan to DP&L which is
17 secured by DP&L's distribution and transmission
18 assets.

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

23 Now, assume that DPL Inc. does not have
24 enough funds to service the debt expense due to
25 Morgan Stanley. In this situation would you agree

1 that one potential option would be for AES
2 Corporation to provide an equity infusion into DPL
3 Inc. that would allow DPL Inc. to meet its debt
4 service obligations?

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

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

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

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

25 Q. Okay. And sticking with this set of

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

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

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

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

19 (Record read.)

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

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

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

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

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

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

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

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

23 EXAMINER PRICE: He can answer if he
24 knows.

25 A. I don't know bankruptcy law.

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

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

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

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

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

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

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

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

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

24 Q. And if Morgan Stanley and any other
25 creditors that may exist in this hypothetical

1 situation we're talking about were to obtain equity
2 in DPL Inc., that would also provide equity in DP&L,
3 correct?

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

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

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

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

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

25 Q. And you have never worked on a bankruptcy

1 matter involving a public utility, right?

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

4 Q. And going to page 5 of your testimony.

5 A. I'm there.

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

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

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

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

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

24 A. I think that's generally correct. The
25 focus of this is really on transmission and

1 distribution, but my analysis includes generation in
2 the business still, so technically to the extent that
3 DP&L is providing generation services of some kind to
4 its customers, then that would be included, but the
5 focus is definitely transmission or distribution.

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

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

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

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

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

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

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

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

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

7 EXAMINER PRICE: You can answer if you
8 know.

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

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

19 A. I've not done that analysis.

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

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

1 it can have an effect on transmission and
2 distribution assets in the area; but, again, it's not
3 one of my specific areas of expertise.

4 Q. And do you agree, as we sit here today,
5 DP&L no longer owns operational generation assets?

6 A. DP&L.

7 Q. Yes.

8 A. I think that's right.

9 Q. And your testimony refers to DPL Inc.,
10 which you agree that entity is not a regulated public
11 utility?

12 A. Well, it has -- its main sort of asset is
13 DP&L, and so it's at least indirectly regulated.
14 But, again, I'm not a lawyer on -- on the separate --
15 the exact way they are legally separated. If you are
16 talking about the Inc., parts of Inc. that are not
17 DP&L, my understanding some of those are either not
18 regulated or regulated lightly at best, but it's not
19 something I've studied.

20 Q. You agree that DPL Inc. has no ability to
21 file an application before the Commission for rate
22 recovery.

23 A. On --

24 Q. I am not asking for a legal
25 determination, just your understanding.

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

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

7 A. No, not really.

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

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

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

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

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

22 A. They file a separate set of financial
23 statements but Inc. is -- Inc.'s financial
24 statements, if you look at them and you compare them
25 to DP&L, they look really similar in lots of ways. I

1 mean, the revenues are like maybe 1 or 2 hundred
2 million different max, maybe less than that.

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

9 THE WITNESS: I'm sorry, your Honor.

10 MR. OLIKER: Thank you, your Honor.

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

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

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

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

7 A. Yep.

8 Q. Let me know when you are on 62.

9 A. I am.

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

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

22 "Answer: Okay. If -- yeah -- if you
23 assume, you know, unrealistically that -- and leave
24 aside the, sort of, real substantial relationships
25 and -- and of this, and assume DPL Inc., in effect,

1 doesn't exist, and DP&L is treated as a stand-alone
2 entity in that world, that hypothetical world, if you
3 just, you know, focused on its level of revenues and
4 costs, and so forth, I believe they have -- would
5 have sufficient cash flow to, you know -- to do what
6 they need to do, again, abstracting -- from
7 completely abstracting from the reality of the
8 situation." Did I read that correctly?

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

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

18 A. I don't know that I can say that there
19 would be because, like I just said, you are
20 projecting into the future. You don't know for sure.
21 But the scenarios that I have relied on, again in
22 this hypothetical, where this hypothetical world
23 where you ignore the reality basically, you know, my
24 projections sort of mathematically show that DP&L
25 would have sufficient cash flow, you know, to cover

1 its O&M costs. It would still have some net income.

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

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

6 Q. Thank you.

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

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

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

16 Q. Of your testimony.

17 A. Oh.

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

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

23 Q. (By Mr. Oliker) And I believe this is in
24 the public record and this is on page 52, line 7, you
25 say that DP&L's debt has restrictive covenants that

1 prevent it from taking on additional debt. This
2 restrictive covenant you identify was entered into
3 when DP&L still owned generation assets, right?

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

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

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

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

18 EXAMINER PRICE: You may.

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

22 A. Yes.

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

1 EXAMINER SCHABO: 1001.

2 MR. OLIKER: 1001.

3 EXAMINER PRICE: It will be so marked.

4 (EXHIBIT MARKED FOR IDENTIFICATION.)

5 Q. (By Mr. Oliker) Mr. Malinak, does the
6 document that's been placed in front of you appear to
7 be the document that is referenced in your testimony?

8 A. Yes. It appears to be, subject to it
9 being many pages, and I would want to take a closer
10 look, but it does look like the one.

11 Q. And is the document dated August 24,
12 2016?

13 A. It is.

14 Q. And was the first time you reviewed this
15 document at your deposition?

16 A. This is the first time I remember doing
17 it. Like I said, it turns out this was in my backup
18 materials, but it was a couple years ago, and I
19 didn't remember reviewing it.

20 Q. And what do you mean by backup materials?

21 A. So I have my staff prepare for me backup
22 binders, so it has pages that support various things,
23 and some pages from this document were included in
24 it.

25 Q. Okay. Thank you.

1 A. I just didn't remember.

2 Q. And am I correct that The Dayton Power
3 and Light Company is listed as the borrower on this
4 document?

5 A. It is.

6 Q. And if we were to turn -- first, if we go
7 to the table of contents, we can identify that the
8 negative covenants are listed under Article VII; is
9 that correct?

10 A. That appears to be the case, yes.

11 Q. And that identifies page 66 as a good
12 place to look for the negative covenants, correct?

13 A. Yes, it does.

14 Q. And can you turn to that page, please.

15 A. I'm there.

16 Q. And am I correct that this is the section
17 that contains the restrictive covenants you identify
18 in your testimony, or at least one of the sections?

19 A. I believe it's one of the sections, yes.

20 Q. And --

21 A. At least one, yeah.

22 Q. And on page 66 under "Article VII,
23 Negative Covenants," am I correct that it states "So
24 long as any Lender shall have any Loan or other
25 Obligation relating solely to the payment of

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

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

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

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

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

21 A. You are in Section (c)?

22 Q. Yes.

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

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

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

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

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

17 Q. Okay.

18 A. I could be just missing it.

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

24 A. Yes. Dayton Power and Light looks like
25 it's restricted from borrowing at most these amounts

1 would be my best interpretation, again, not being a
2 lawyer.

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

10 A. That's the way that reads.

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

14 A. That appears to be the case.

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

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

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

1 would be 125 million, correct?

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

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

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

12 Q. And if you could turn to Section VI.

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

15 Q. Maybe -- maybe --

16 EXAMINER PRICE: Perhaps on redirect.

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

19 A. I'm sorry, what page?

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

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

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

25 A. I just -- I don't know as I sit here, I

1 mean, whether the covenants are sort of this mutual
2 thing or not, but it looks like it's focused on the
3 borrower, "the Borrower shall," and, again, I am not
4 an expert on these things. But for all I know
5 covenants are only related to the borrower, not the
6 lender but.

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

12 A. Yes.

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

20 A. I am -- I am reading the rest of the
21 clause on the next page. This is just -- again, it's
22 one of the reasons why it might -- the text of my
23 testimony I say I understand from the Company that
24 this debt has these characteristics as this is --
25 this is legal here. It says -- it says -- it looks

1 like there is an exception, make all necessary
2 repairs thereto and renewals except in the case of
3 clauses (a) and (b) where the failure to do so could
4 not reasonably be expected -- reasonably expected to
5 have a Material Adverse Effect.

6 Q. Which is a defined term, correct?

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

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

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

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

22 EXAMINER PRICE: Okay.

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

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

3 (Recess taken.)

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

6 Mr. Olikier, you may continue.

7 MR. OLIKER: Thank you, your Honor.

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

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

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

20 A. DP&L?

21 Q. Yes.

22 A. I would have to go back and look to see
23 what their rating was, but my understanding was that
24 this loan agreement was entered into and the market
25 the Company went to was referred to as kind of the

1 high yield market, the lower credit level market, so
2 I would have to look at the rating history to see
3 exactly what their rating was at the time.

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

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

10 EXAMINER PRICE: Okay.

11 Q. (By Mr. Olikier) And since the execution
12 of this credit agreement, you would agree that DP&L
13 has been paying interest of approximately in the
14 4 percent range?

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

24 Q. Okay. And with respect to credit
25 ratings, the main factor that the rating agencies

1 look at is funds from operations, correct?

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

4 Q. That's the main factor, correct?

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

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

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

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

24 A. Not specifically. I have a vague
25 recollection that there is -- there might be a

1 separate account that -- that they -- they're
2 accounted for in but, again, that's just a vague
3 memory.

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

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

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

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

21 Q. Okay.

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

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

3 A. Yes, I do.

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

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

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

12 EXAMINER PRICE: You may.

13 (Record read.)

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

16 A. Yes.

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

22 A. Not the way you put it, no. You need the
23 two together. You need a total revenue that covers
24 O&M and all of the probably absolutely necessary,
25 100 percent necessary CAPEX, but technically debt

1 payments come before CAPEX so you don't -- no, I
2 don't look at the DMR as a separate thing. You have
3 to look at the total amount.

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

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

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

14 A. Yeah, essentially, yes.

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

19 A. Strictly from an accounting point of
20 view, okay, if the amounts that -- of the after-tax
21 net operating income that are not sent up dividends,
22 the order is, you know, DP&L has a certain amount of
23 net income, then if they can afford to send the cash
24 up to the parent, then they do it. And then that
25 hits equity after -- after the fact, okay? So I

1 don't know if that answers your question, but I
2 wanted to get the order straight.

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

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

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

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

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

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

21 A. It would increase retained earnings.

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

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

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

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

15 Q. Yes.

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

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

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

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

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

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

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

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

23 A. Well, I mean, customers are stakeholders.
24 They don't receive a particular like security or
25 something to my knowledge, but they obtain a clear

1 benefit for -- for the money that they are paying,
2 all of the revenues that they pay including the DMR.

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

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

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

11 A. Yes, over five years.

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

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

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

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

25 Q. Okay. And are you familiar with the Tax

1 Cut Jobs Act?

2 A. I know generally what it is.

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

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

8 Q. Yes.

9 A. Yeah.

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

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

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

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

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

25 A. Okay. So in 2017, okay, this is true of

1 all my projections because we were working from the
2 screen of 2017 and we didn't have anything -- that
3 was the information that we had is my state and
4 federal tax rate was in the neighborhood of 35
5 percent, 36 percent, it was fairly close, right in
6 there.

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

9 A. In 2017?

10 Q. Yes.

11 A. I don't know.

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

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

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

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

25 Q. And the tax rates that would apply for

1 2018, '19, '20, and '21, if we applied the 21 percent
2 rate, would you agree that would reduce the total
3 revenues available to DP&L for the DMR by about 80 to
4 85 million dollars, just 21 times 420 or .21, I
5 suppose?

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

13 Q. Okay.

14 A. -- abstracting for their tax situation.

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

19 A. No.

20 Q. Could you explain why you disagree?

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

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

25 A. That's correct.

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

6 A. No.

7 Q. What is the number you came up with?

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

11 Q. Yes.

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

14 MR. OLIKER: Okay.

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

20 A. Maybe just a little bit over half --

21 Q. Okay.

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

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

1 A. Yes.

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

5 A. Yes.

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

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

17 Q. But the answer --

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

19 (Discussion off the record.)

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

22 Q. (By Mr. Oliker) I think you said the
23 answer was, yes, it was quantitatively worse than
24 500 million --

25 A. No.

1 Q. -- with the net present value adjustment?

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

4 Q. Okay. And when you state on page 9, line
5 16 through 19, that the DMR and Reconciliation Rider
6 would be available in an MRO, for purposes of this
7 statement, you are relying upon counsel for advice,
8 correct?

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

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

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

24 Q. And you just alluded to this a minute
25 ago, on page 9, line 11, you indicate that DMR and RR

1 would be available potentially in a distribution rate
2 case. Am I correct that this statement is also based
3 upon discussions with counsel?

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

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

7 EXAMINER PRICE: That's correct.

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

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

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

23 Q. And the legal --

24 A. -- on rare occasions I've seen times when
25 I come back and ask more questions about it, so it's

1 sort of a trust but verify.

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

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

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

9 A. I don't recall.

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

12 A. Yes. I have not.

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

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

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

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

24 Q. But you do agree that in a distribution
25 rate case the Commission would exclude from rate

1 recovery any investments that were not owned by DP&L.

2 THE WITNESS: Would you read that back
3 again?

4 EXAMINER PRICE: Please.

5 (Record read.)

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

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

15 A. You mean legally.

16 EXAMINER PRICE: Are you asking for a
17 legal conclusion?

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

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

1 since the Amended Stipulation was approved.

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

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

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

10 EXAMINER PRICE: It better have been a
11 question.

12 (Record read.)

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

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

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

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

7 A. I have not tried to specifically quantify
8 that.

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

11 EXAMINER PRICE: Could you give us a line
12 reference?

13 MR. OLIKER: Yeah. One second.

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

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

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

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

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

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

10 EXAMINER PRICE: But you do not quantify
11 that.

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

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

17 THE WITNESS: I have not.

18 EXAMINER PRICE: Thank you.

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

23 A. In the stipulation?

24 Q. Yes.

25 A. I don't know.

1 Q. Are you familiar with FirstEnergy Ohio?

2 A. I'm aware of who they are in general.

3 Q. Do you know if they had a provision
4 similar to the Distribution Modernization Rider?

5 EXAMINER PRICE: Relevance, Mr. Oliker?

6 MR. OLIKER: Theirs had a provision that
7 made it become smaller in size when the tax rate
8 changes.

9 EXAMINER PRICE: How is that relevant to
10 any probative issue here?

11 MR. OLIKER: It would go to whether this
12 is a benefit or maybe something the Commission should
13 do.

14 EXAMINER PRICE: You are free to
15 recommend that. I don't know why this witness is the
16 appropriate vehicle for that recommendation. Let's
17 move on.

18 Q. (By Mr. Oliker) And I can ask the
19 question this way, to your knowledge has the DMR
20 changed in size given that we are in the unique
21 scenario of actually trying the case while the rider
22 is in effect as a result of the tax change?

23 A. I don't think it has changed in size.

24 Q. Okay.

25 EXAMINER PRICE: Can I have the answer

1 back again.

2 (Record read.)

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

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

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

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

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

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

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

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

18 (Discussion off the record.)

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

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

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Monday Afternoon Session,
April 1, 2019.

- - -

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

Mr. Oliker, you may proceed.

MR. OLIKER: Thank you, your Honor.

- - -

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.

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

3 EXAMINER PRICE: It will be so marked.
4 (EXHIBIT MARKED FOR IDENTIFICATION.)

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

10 A. Yeah, this refers to my page 29.

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

19 A. Yes, I see that.

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

23 A. It does.

24 Q. And in Section B that -- of the question,
25 it states "Is it DP&L's position that it would

1 dividend money to DPL, rather than spending the money
2 on O&M needed to maintain reliable electric service,"
3 and in response DP&L's answer would be that it does
4 not know since it does not know what will happen in
5 the future. Is that correct?

6 A. Yeah, that's what it says.

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

9 A. Correct.

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

16 A. Yes, that's what it says.

17 Q. Okay.

18 MR. OLIKER: Your Honor, at this point in
19 time, although I'm willing to leave the discovery
20 response in the record, I would move to strike page
21 29, line 11 through 17, given that when posed the
22 question, a response was provided by a different
23 witness which is testifying tomorrow which reflects
24 that someone else has taken ownership over this
25 testimony, and it is not Mr. Malinak.

1 EXAMINER PRICE: Denied.

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

5 A. Yes.

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

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

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

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

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

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

23 THE WITNESS: Yes.

24 EXAMINER PRICE: Do you equate "would
25 negatively affect service quality" with failure to

1 provide safe and reliable service? Are those two
2 phrases synonyms in your mind?

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

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

16 EXAMINER PRICE: Thank you.

17 Q. (By Mr. Oliker) Okay. Turning to page
18 56 --

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

22 Q. (By Mr. Oliker) And then on line 1 and 2,
23 you say "These results are an additional indicator of
24 DPL's weakened financial condition absent the DMR and
25 Reconciliation Rider. In this distressed condition,

1 the Company likely would have restricted access to
2 its revolving line of credit and could be forced into
3 default." When you refer to "the Company" on line 2,
4 you are referring to DPL Inc., correct?

5 A. Yeah, in this particular passage.

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

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

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

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

24 Q. Yes.

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

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

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

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

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

11 A. They are.

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

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

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

21 THE WITNESS: The combined entities
22 because if DPL has to declare bankruptcy or goes into
23 default, the two companies are joined at the hip. I
24 mean, we know that from various evidence including
25 the refinancing of the \$445 million of debt which was

1 done in the high yield market. That was DP&L that
2 had to do that back in 2016. And right before the
3 hearing last year -- two years ago, S&P downgraded
4 both entities together, and so they are -- S&P treats
5 them as combined and Moody's treats them as a link
6 and that's because inevitably the financial substance
7 of it is that they're linked.

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

10 THE WITNESS: Oh, I'm sorry.

11 EXAMINER PRICE: That's okay.

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

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

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

23 A. No.

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

1 electric rates" -- let me restate that. I'm sorry.

2 On page 59, on line 4, you state "The
3 increased cost of debt at DP&L would increase
4 electric rates." You don't know if DP&L can increase
5 its distribution rates to account for increased
6 borrowing costs without filing a rate case, correct?

7 A. Yeah. This is kind of an all else equal
8 thing. I don't know exactly when the increased costs
9 to debt might increase rates, but it's almost
10 inevitable that over time it will.

11 EXAMINER PRICE: You are saying in the
12 long run it will result in increased rates.

13 THE WITNESS: And it could be near term
14 too, but it depends on how rates get adjusted, which
15 I don't know, but -- and, you know, if the utility
16 were to fall on super hard times, it won't be
17 forgotten by the markets. I mean, it's something
18 that can last a long time.

19 Q. (By Mr. Oliker) And I think earlier we
20 established that DP&L's current long-term debt
21 balance is about \$594 million?

22 A. I think that's right. I think that's in
23 this interrogatory response.

24 Q. And you can take a moment to flip through
25 and see if you can refresh your recollection. Maybe

1 I can turn you to Interrogatory 10-12.

2 A. Yeah, page 17.

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

6 A. That appears to be the case, yes.

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

10 A. I think that math works.

11 Q. And --

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

15 THE WITNESS: I have.

16 EXAMINER PRICE: Okay. Thank you.

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

24 A. Correct.

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

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

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

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

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

23 Q. And to the extent the DMR and the
24 Reconciliation Rider is not authorized, would you
25 agree that AES Corporation would have to decide

1 whether to provide an equity injection to DPL Inc. or
2 whether to allow DPL Inc. to file for bankruptcy
3 protection?

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

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

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

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

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

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

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

8 EXAMINER PRICE: Sustained.

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

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

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

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

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

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

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

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

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

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

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

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

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

20 EXAMINER PRICE: He can answer if he
21 knows.

22 A. I don't know all the details of the
23 arrangement. I have an understanding of the nature
24 of the Reconciliation Rider as being almost like a
25 true-up. If the costs of the OVEC energy are greater

1 than market, then that difference gets added to
2 rates. If market prices were to rise above the OVEC
3 price, then they would be a reduction to rates.
4 That's my understanding of the way that the
5 Reconciliation Rider operates.

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

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

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

23 A. Well, the difference between the -- if
24 you think of PJM as the market and OVEC, you know,
25 the OVEC costs are higher than the PJM costs, so in

1 that sense you could call it above market, but then
2 sometimes it will be below market.

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

6 A. I have not looked at those data.

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

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

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

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

1 EXAMINER PRICE: Thank you.

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

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

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

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

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

15 Q. And Oncor is located in Texas, right?

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

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

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

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

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

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

7 (Record read.)

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

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

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

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

20 EXAMINER PRICE: So marked.

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

23 (EXHIBIT MARKED FOR IDENTIFICATION.)

24 Q. Mr. Malinak, am I correct -- I think you
25 told me earlier that Figure 4 and Figure 5 was taken

1 from Moody's website and credit ratings of these
2 utilities?

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

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

11 A. Say that again.

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

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

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

18 A. That's correct.

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

22 A. Yeah, through Bloomberg or another
23 information provider.

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

1 Moody's rating action on April 29 of 2014?

2 A. It does.

3 Q. And this would be a source for whatever
4 information was compiled on Figure 4, correct?

5 A. No, not necessarily.

6 Q. And that is because you've got 2014 and
7 2015, correct?

8 A. It's because, yeah, the ratings are -- I
9 believe the ratings that are in place at the end of
10 2015 and so that's why -- that could be a reason why
11 this is not the operative rating.

12 Q. Okay. And we can -- we can get to that
13 in a minute, but you would agree that on April 29
14 Moody's did take action regarding Oncor as a result
15 of the bankruptcy filing of its parent company Energy
16 Future Holdings.

17 MR. SHARKEY: I am going to object. This
18 is straying pretty far afield of Mr. Malinak's
19 testimony. I don't really believe this is relevant.

20 MR. OLIKER: Your Honor.

21 EXAMINER PRICE: I am willing to allow
22 the questions if he can lay a proper foundation which
23 he has not done yet.

24 MR. OLIKER: Your Honor, this document is
25 from Moody's Rating Service. I believe it can be

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

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

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

10 EXAMINER PRICE: This document,
11 Mr. Oliker.

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

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

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

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

22 A. Well, I have an idea.

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

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

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

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

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

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

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

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

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

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

25 MR. SHARKEY: Again, objection, your

1 Honor.

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

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

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

8 THE WITNESS: I actually do know that.

9 EXAMINER PRICE: There you go.

10 Q. And by you do know it you mean?

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

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

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

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

21 A. Yes. Based on this document and --

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

25 THE WITNESS: I did not know absent this

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

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

7 A. Well, based on the --

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

14 EXAMINER PRICE: Sustained.

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

25 EXAMINER PRICE: I am going to deny the

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

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

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

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

18 EXAMINER PRICE: You may.

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

1 senior secured rating to A3 from Baal."

2 EXAMINER PRICE: So marked.

3 (EXHIBITS MARKED FOR IDENTIFICATION.)

4 Q. (By Mr. Oliker) And, Mr. Malinak, have
5 you seen the Moody's action on Oncor at May 13, 2014?

6 A. I have not seen this.

7 Q. And you are not aware -- can you turn to
8 IGS Exhibit 1005.

9 A. Which one is that?

10 Q. And that is the July 29, 2016.

11 A. Yep. I'm looking at it.

12 Q. And have you reviewed the Moody's action
13 on July 29 of 2016?

14 A. Not before today.

15 Q. And could you then clarify for the record
16 where you obtained the rating information on Figure 4
17 that says it relied upon Moody's?

18 A. Yeah. I believe we used either Bloomberg
19 or SNL to get that, but I -- it was a service. We
20 didn't go to Mood -- specific Moody's reports, so it
21 would have been -- would have been one of those two,
22 I think.

23 Q. Where do you think they got the
24 information?

25 A. I don't know, probably from Moody's or

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

10 Q. Okay. And --

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

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

17 EXAMINER PRICE: Mr. Sharkey.

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

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

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

8 EXAMINER PRICE: Sorry. You've got more.

9 MR. OLIKER: IGS Exhibits 1003, 1004, and
10 1005 are publicly-available documents which provide
11 the source information that was relied upon by
12 Mr. Malinak in his testimony; therefore, they should
13 be permitted into the evidence. And if those
14 documents had been permitted, it would become quite
15 evident that Oncor, a public utility with a parent
16 company in the middle of bankruptcy, and at the time
17 the parent company was rated as being junk, although
18 Oncor was not because I will say in the words of
19 Moody's --

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

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

25 EXAMINER PRICE: Okay.

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

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

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

1 would go into if that were to occur.

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

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

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

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

24 MR. OLIKER: I am also trying to get in
25 that they were simply investment grade while the

1 parent was in bankruptcy.

2 EXAMINER PRICE: I understand that.

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

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

9 MR. OLIKER: Okay.

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

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

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

24 A. Yes, I believe so.

25 Q. Okay. Actually just take a step back.

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

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

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

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

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

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

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

24 EXAMINER PRICE: You may.

25 MR. OLIKER: As IGS Exhibit 1006, I would

1 like to mark The Dayton Power and Light Company
2 Distribution Rate Case Book I-Application and
3 Supplemental Volume 1 of 14.

4 EXAMINER PRICE: It will be so marked.

5 (EXHIBIT MARKED FOR IDENTIFICATION.

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

10 MR. SHARKEY: Objection, your Honor.

11 There is no evidence that Mr. Malinak has seen this
12 document.

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

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

17 A. I don't recall having done so.

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

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

25 Q. Okay. Before -- putting the document

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

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

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

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

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

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

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

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

20 Q. Okay. Is that the extent of your
21 knowledge of what a corporate separation plan is?

22 A. When you are saying a corporate
23 separation plan, there could be a thousand different
24 types of corporation separation plans. It's --

25 Q. Do you know if there is a formal document

1 that sets forth DP&L's obligations regarding its
2 competitive and noncompetitive businesses and whether
3 or not they may subsidize each other?

4 A. I'm not specifically aware of those -- of
5 provisions to that effect.

6 Q. And do you know what a cost alignment and
7 allocation manual is?

8 A. No.

9 Q. Do you know what a cost allocation manual
10 is?

11 A. A cost allocation manual?

12 Q. Do you know if DP&L has a cost allocation
13 manual?

14 A. I have a vague memory that they -- that
15 there is such a manual.

16 Q. Do you know --

17 A. But it's from years ago before the
18 Amended Stipulation.

19 Q. Do you know what it does?

20 A. I know -- I mean, but I remember vague --
21 generally vaguely is that there was a manual. There
22 were some internal documentation on the -- how to
23 allocate costs among the various businesses that were
24 related businesses, DPL and DP&L. That's my vague
25 recollection.

1 Q. Okay. And to follow up, this is a slight
2 tweak, in an earlier question I asked you, I think we
3 demonstrated you didn't ask DP&L if it has any ring
4 fencing provisions in place, and I'll change the
5 question a little bit. Do you know if DP&L has any
6 ring fencing provisions in place?

7 A. Okay. I don't have -- I have a -- again,
8 a somewhat uncertain memory that -- that they don't
9 have -- you know, I have in my memory that they don't
10 have strong ring fencing provisions. But, again,
11 that's based on just, you know, what I remember from
12 the last five years.

13 Q. And you also don't know if DP&L
14 represented to the Commission in its distribution
15 rate case that it had ring fencing provisions.

16 A. I don't know what they represented.

17 Q. Okay.

18 MR. OLIKER: If I could have one minute,
19 your Honor, I might be ready for the confidential
20 session, but I want to check over my notes.

21 EXAMINER PRICE: Take your time.

22 Q. Just a few more questions in the public
23 section. Mr. Malinak, you are aware that AES --
24 first, are you aware which year AES acquired DPL
25 Inc.?

1 A. Gosh, not the precise year. I think it
2 was in the 2010 range, plus or minus, somewhere right
3 in there, but it's been a while since I've looked at
4 that.

5 Q. And since the time that AES acquired DP&L
6 Inc., would you agree DPL Inc. has provided no cash
7 equity injections to DP&L?

8 A. I haven't looked specifically at that
9 issue, so I don't know for sure. I know that through
10 the Amended Stipulation they have done -- they have
11 provided tax forgiveness, and they have forgone
12 dividends and the impact of that. Some of that has
13 kind of a cash flow impact. The way of increasing
14 cash flow, if you are not paying tax out of the
15 organization, then you're -- you're keeping the cash
16 so.

17 MR. OLIKER: Okay. And could I have that
18 answer read back to me.

19 EXAMINER PRICE: You may.

20 (Record read.)

21 MR. OLIKER: Your Honor, I would move to
22 strike his answer. I asked if DPL Inc. has provided
23 any cash injections to DP&L, not whether or not they
24 have foregone cash or have incremental impact -- I
25 asked did they give them cash, and he did not

1 respond.

2 EXAMINER PRICE: You said cash equity
3 injections which I think opened the door for his
4 response so denied.

5 Q. (By Mr. Oliker) Would you agree that DPL
6 Inc. provided no direct cash injections to DP&L since
7 the acquisition from AES?

8 A. Okay. You are asking Inc. to the DP&L.

9 Q. Yep.

10 A. And the answer is I have not examined
11 that -- that directly.

12 MR. OLIKER: Okay. I think I am ready to
13 go into confidential session, your Honor.

14 EXAMINER PRICE: Okay. At this time we
15 will go into confidential session.

16 (CONFIDENTIAL PORTION EXCERPTED.)

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(OPEN RECORD.)

1 EXAMINER SCHABO: Mr. Sharkey?

2 MR. SHARKEY: Yes. Thank you, your
3 Honor.

4 - - -

5 REDIRECT EXAMINATION

6 By Mr. Sharkey:

7 Q. Mr. Malinak, do you recall that
8 Mr. Oliker asked you some questions about the TCJA?

9 A. Yes, I do.

10 EXAMINER SCHABO: Are we back in public?

11 MR. SHARKEY: Yes, we are back in public.

12 EXAMINER SCHABO: Sorry. Go ahead.

13 A. I do remember.

14 Q. Do you believe that the DMR amount should
15 be reduced in light of the passage of the TCJA?

16 A. No, I do not. By doing so would defeat
17 the purpose of the TCJA and I would just add that the
18 TCJA while it does produce a higher after-tax DMR
19 amount, there are other impacts of the TCJA which are
20 negative on utilities and on DPL and I haven't done
21 the analysis in or looked at it in detail, but it's
22 probably a net negative.

23 Q. What were the DMR funds to be used for,
24 Mr. Malinak?

25 A. Debt, pay down debt service, financial

1 integrity.

2 Q. And if the DMR amount was reduced to the
3 TCJA, what effect would that have on the ability of
4 DP&L to pay down that debt?

5 A. It would reduce -- it would reduce the
6 effectiveness of the DMR.

7 Q. Do you recall that Mr. Oliker also asked
8 you some questions about some developments since your
9 testimony that had a positive financial effect upon
10 The Dayton Power and Light Company and DPL Inc.?

11 A. Yes.

12 Q. Have there been also since your testimony
13 was filed back in 2017 negative impacts upon DP&L and
14 DPL Inc.?

15 A. Yes. A number including distribution
16 revenues that are significant -- are 30, 40 million
17 dollars or so less than were in my projections
18 originally. I understand there's been increased --
19 at least from a cash flow perspective increased
20 transmission CAPEX, and they've also -- I said this
21 before, you divest -- you shut down coal plants, if
22 they are negative free cash flow, that's a positive,
23 but sale of the other coal plants or transfer out and
24 sale, the transfer out will reduce the operating cash
25 flows of DP&L significantly which is a metric that

1 the rating agencies look at. You do get the proceeds
2 from sales which can be used to pay down debt and
3 that offsets it, but the loss of operating cash flow
4 can be significant. If you look at the statement of
5 cash flow by business unit section and you go to
6 generation operating cash flow, okay, you're talking
7 [*****REDACTED*****] et cetera.

8 Now, that includes Stuart and Killen. I haven't sort
9 of flyspecked it as to those that were sold, but they
10 will -- the ones that sold theoretically have solid
11 operating cash flows. Otherwise, they could not have
12 been sold so that's a negative.

13 MR. SHARKEY: Your Honor, Mr. Malinak
14 read into the record some information that's
15 confidential. Could I ask to file a motion that it
16 just be moved from the public transcript in the
17 confidential transcript?

18 EXAMINER SCHABO: Yes. That motion will
19 be granted.

20 MR. SHARKEY: Thank you, your Honor.

21 THE WITNESS: I'm sorry, your Honor.

22 Q. (By Mr. Sharkey) Mr. Malinak, net effect
23 bottom line is DP&L's need for a DMR greater or
24 lesser now than in 2017 with regard to your
25 testimony?

1 A. It's clearly greater.

2 Q. And without getting into the numbers, can
3 you give me a quick overview as to why that is?

4 A. Well, because there's been a number of
5 net negative effects of, you know, what I mentioned,
6 the distribution revenues, I mentioned the -- I
7 believe there was some unexpected increased CAPEX
8 that negatively affected near term cash flow.

9 There was again the loss of the operating
10 cash flow, the generation. As I sit here today, I
11 know that there were other negative impacts that I'm
12 just not remembering but there were a number of them.
13 And so maybe -- maybe market conditions have not been
14 as good as hoped for. And so all of those things
15 have led them to need a DMR even more so than when I
16 did my Amended Stipulation.

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

19 EXAMINER SCHABO: Mr. Oliker?

20 MR. OLIKER: Thank you, your Honor.

21 For purposes of recross, may we go off
22 the record for a second?

23 (Discussion off the record.)

24 EXAMINER SCHABO: Let's go back on the
25 record.

1 Mr. Alexander, do you have any recross?
2 You have to sit in the middle next time.

3 MR. ALEXANDER: I just heard something
4 unexpected. No, no questions, your Honor. Thank
5 you.

6 EXAMINER SCHABO: Thank you.

7 Ms. Bojko?

8 MS. BOJKO: No, thank you, your Honor.

9 EXAMINER SCHABO: Ms. Fleisher?

10 MS. FLEISHER: No, thank you.

11 EXAMINER SCHABO: Ms. not Harris anymore?

12 MS. GRUNDMANN: No questions.

13 EXAMINER SCHABO: Ms. Whitfield?

14 MS. WHITFIELD: No questions, your Honor.

15 EXAMINER SCHABO: Mr. Michael?

16 MR. MICHAEL: No questions.

17 EXAMINER SCHABO: Mr. Pritchard?

18 MR. PRITCHARD: No questions.

19 EXAMINER SCHABO: Ms. Petrucci?

20 MS. PETRUCCI: No, thank you.

21 MR. OLIKER: Thank you, your Honor.

22 - - -

23 REXCROSS-EXAMINATION

24 By Mr. Oliker:

25 Q. Follow up on some things that your

1 counsel had indicated. Regarding the impacts
2 financially on DP&L, you agree when you drafted this
3 testimony, you expected the generation assets to be
4 transferred and not part of the financials of DP&L,
5 although you modeled an integrated utility?

6 A. Yeah. I understood that was the plan,
7 but I didn't know when it was going to happen and
8 what the details of it were going to be.

9 Q. Did the Stipulation say when that would
10 happen?

11 A. I can't remember.

12 Q. Do you know if there was an application
13 filed before the FERC to transfer the generation at
14 the time the Stipulation was presented to the
15 Commission?

16 A. I don't recall.

17 Q. And I think we established, and I don't
18 want to talk about the numbers themselves, but I
19 would like to do this in the public record, the --
20 the projected distribution cash flows that you relied
21 upon had zero value from the DIR, correct?

22 A. That's correct. We set the DIR to zero.

23 Q. And when you were looking through the
24 statements of cash flows, did you see a line item for
25 shared savings from energy efficiency? And I don't

1 want you to identify anything else but.

2 A. Just now? I did not.

3 Q. And have you followed up with the Company
4 on that question at all?

5 A. I have not.

6 Q. And can you do some -- is 4-1/2 percent
7 times 595 million about \$26.5 million a year in
8 interest?

9 A. What were those numbers again?

10 Q. 4.5 percent times 595 million.

11 A. Those two numbers multiplied together are
12 about 27 million.

13 Q. 26.7 million about?

14 A. 26.8.

15 Q. Okay. And based upon the current
16 interest rate that DP&L is paying, would you expect
17 the total annual interest to be about \$27 million?

18 MR. SHARKEY: Objection, foundation.

19 Hasn't established Mr. Malinak knows the current
20 interest rate they are paying.

21 MR. OLIKER: That's fine.

22 EXAMINER SCHABO: Sustained.

23 Q. (By Mr. Oliker) Mr. Malinak, has DP&L's
24 annual interest rate been in the 4.5 percent range?

25 A. I would have to flyspeck the various

1 numbers but, I mean, I haven't looked -- I don't
2 remember about what it is currently. I mean, I can
3 tell you what I was assuming in my projections,
4 approximately. I mean, I can't tell you the way it
5 averaged without drilling down, but I can tell you a
6 few interest rates on the exhibit.

7 Q. Okay.

8 A. And you asked DP&L, correct?

9 Q. Yes.

10 A. Yeah.

11 Q. But my question was more about what's
12 actually happening under the current variable rate
13 rather than what you are projecting, Mr. Malinak.

14 A. Yeah. I don't know what it is.

15 Q. Okay. And I am not sure we discussed
16 this earlier, but to the extent DP&L incurs
17 transmission-related capital expenditures, would you
18 agree that it can file a rate case before the Federal
19 Energy Regulatory Commission?

20 A. You know, I am not an expert on exactly
21 where they can file, but I do know the FERC does
22 regulate transmission, so it would not surprise me if
23 they could file a case related to transmission costs.

24 MR. OLIKER: Thank you, your Honor.

25 Those are all the questions I have.

1 Thank you, Mr. Malinak.

2 EXAMINER SCHABO: Thank you, Mr. Malinak.

3 You may step down.

4 THE WITNESS: Okay.

5 EXAMINER SCHABO: Next step would be
6 whether or not you would like to move any of your
7 exhibits.

8 MR. OLIKER: At this time, your Honor,
9 IGS would move for the admission of Exhibit 1001 and
10 the portions of IGS Exhibit 1002 that were relied
11 upon. I think we may ultimately refer to other
12 portions of that document with Mr. Garavaglia, but
13 for now, I would limit it to the interrogatories that
14 I referenced. And after the cross-examination is
15 completed, I would be happy to do a more accurate
16 document to the extent that this record is reviewed
17 by somebody else other than us.

18 Does that make sense to you, Jeff?

19 MR. SHARKEY: Yes, I understand it.

20 MR. OLIKER: Yeah.

21 MR. SHARKEY: Just make sure I
22 understand, you are going to wait to determine how
23 much of 1002 you are moving in until you completed
24 cross-examination --

25 MR. OLIKER: Right.

1 MR. SHARKEY: -- of DP&L's other
2 witnesses?

3 MR. OLIKER: I would move it now but just
4 the interrogatories we've talked about.

5 MR. SHARKEY: Okay. Understood.

6 EXAMINER SCHABO: Any objection to that?

7 MR. SHARKEY: I have no objections on
8 1002, your Honor.

9 EXAMINER SCHABO: Okay.

10 MR. OLIKER: And I would renew my request
11 for administrative notice of the Moody's documents,
12 but without going down that road again, I will leave
13 it at that --

14 EXAMINER SCHABO: Okay.

15 MR. OLIKER: -- which would be Exhibits
16 1003, 1004, and 1005 but recognizing the Bench is
17 unlikely to change that ruling.

18 EXAMINER SCHABO: The Bench is very
19 unlikely to change that ruling right now. Were there
20 any other objections on 1001 or those portions of
21 1002 that were discussed today?

22 None? By seeing none, 1001, 1002 to that
23 degree will be admitted.

24 (EXHIBITS ADMITTED INTO EVIDENCE.)

25 MR. OLIKER: And I'm not going to move

1 Exhibit 1006 at this time. I will move IGS 1007 and
2 1008 but not 9 because we did not talk about it.

3 EXAMINER SCHABO: Objections?

4 MR. SHARKEY: No, your Honor.

5 EXAMINER SCHABO: None?

6 Seeing none, 1007 and 1008 will be
7 admitted.

8 (EXHIBITS ADMITTED INTO EVIDENCE.)

9 EXAMINER SCHABO: All right. Let's go
10 off the record.

11 (Discussion off the record.)

12 EXAMINER SCHABO: Let's go back on the
13 record.

14 See everybody tomorrow at 9:00 starting
15 with Mr. Garavaglia.

16 (Thereupon, at 4:23 p.m., the hearing was
17 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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Summary: Transcript in the matter of the Dayton Power and Light Company hearing held on 04/01/19 - Volume VI electronically filed by Mr. Ken Spencer on behalf of Armstrong & Okey, Inc. and Gibson, Karen Sue Mrs.