

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

- - -

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

:

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

:

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

- - -

PROCEEDINGS

before Mr. Gregory Price and Ms. Patricia Schabo,
Attorney Examiners, at the Public Utilities
Commission of Ohio, 180 East Broad Street, Room 11-A,
Columbus, Ohio, called at 9:09 a.m. on Wednesday,
April 3, 2019.

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VOLUME VIII

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1 Wednesday Morning Session,
2 April 3, 2019.

3 - - -

4 EXAMINER PRICE: Let's go on the record.
5 Good morning. The Public Utilities
6 Commission of Ohio has set for hearing at this time
7 and place Case No. 16-395-EL-SSO, being in the Matter
8 of the Application of The Dayton Power and Light
9 Company for Approval of Its Electric Security Plan.
10 This is our eighth day of hearing in this proceeding.

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

14 We will proceed with IGS's first witness.
15 Mr. Oliker.

16 MR. OLIKER: IGS would call Matthew White
17 to the stand.

18 (Witness sworn.)

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

21 THE WITNESS: My name is Matt White, and
22 my business address is 6100 Emerald Parkway, Dublin,
23 Ohio 43212.

24 EXAMINER PRICE: Please proceed,
25 Mr. Oliker.

1 MR. OLIKER: Can we go off the record one
2 second, your Honor?

3 EXAMINER PRICE: You may.

4 (Discussion off the record.)

5 EXAMINER PRICE: Go back on the record.

6 - - -

7 MATTHEW WHITE

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

10 DIRECT EXAMINATION

11 By Mr. Olikar:

12 Q. Mr. White, did you prepare supplemental
13 direct testimony in this proceeding?

14 A. Yes.

15 Q. And is that document in front of you?

16 A. Yes.

17 MR. OLIKER: Your Honor, at this time I
18 would like to mark the supplemental direct testimony
19 of Matthew White as IGS Exhibit 1014.

20 EXAMINER PRICE: So marked.

21 (EXHIBIT MARKED FOR IDENTIFICATION.)

22 Q. (By Mr. Olikar) And, Mr. White, this was
23 testimony prepared by you or under your direction?

24 A. Yes.

25 Q. And do you have any changes to make to

1 this testimony?

2 A. No.

3 Q. If you were asked the same questions
4 today, would your answers be the same?

5 A. Yes.

6 MR. OLIKER: Okay. With that, your
7 Honor, I would move the exhibit and tender the
8 witness for cross-examination.

9 EXAMINER PRICE: Thank you. Company?

10 MR. ALEXANDER: Your Honor, did you want
11 to ask if any of the other signatory parties had
12 cross-examination?

13 EXAMINER PRICE: I was going to let the
14 Company go first, unless you prefer. Let's go off
15 the record.

16 (Discussion off the record.)

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

19 Company.

20 MR. IRELAND: Yes. I am trying to get my
21 microphone to work, your Honor.

22 EXAMINER PRICE: Press it twice.

23 - - -

24

25

CROSS-EXAMINATION

By Mr. Ireland:

Q. Okay. Good morning, Mr. White.

A. Good morning.

Q. Have you read Mr. Malinak's deposition as part of your preparation for this testimony?

A. Mr. Malinak?

Q. Yes, Mr. Malinak's.

A. Deposition?

Q. Yeah.

A. I don't believe I have.

Q. Have you read Mr. Garavaglia's deposition?

A. No.

Q. Were you present when either of those gentlemen testified in this case?

A. No.

Q. Have you been provided with a summary of their testimony in this case?

MR. OLIKER: Objection.

A. What --

MR. OLIKER: Summary of their direct testimony? Are we talking about --

MR. IRELAND: Their cross-examination, their examination.

1 A. Their cross-examination?

2 Q. Yes.

3 A. No.

4 Q. And as I understand your testimony, you
5 are currently the general counsel of IGS; is that
6 right?

7 A. I recently had a title change, chief
8 legal officer.

9 Q. And how long have you been the chief
10 legal officer?

11 A. About a week.

12 Q. Congratulations.

13 A. Thank you.

14 MR. MICHAEL: It's not all it's cracked
15 up to be.

16 Q. And prior to becoming chief legal
17 officer, you were general counsel for about two
18 years?

19 A. Yes.

20 Q. And you're responsible for legal,
21 regulatory compliance, and legislation; is that
22 right?

23 A. Yes.

24 Q. And you have concluded in your
25 supplemental testimony in this case that the Amended

1 Stipulation is not in the public interest; is that
2 right?

3 A. Yes.

4 Q. And you've concluded that it violates
5 regulatory practices; is that right?

6 A. Yes.

7 Q. Now, as I understand your position at
8 IGS, you report to your uncle who is the CEO of IGS;
9 is that right?

10 A. Yes.

11 Q. And IGS is a privately-owned company, is
12 it not?

13 A. Yes. It's privately held.

14 Q. And it's privately held by your family;
15 is that right?

16 MR. OLIVER: Objection.

17 EXAMINER PRICE: Grounds?

18 MR. OLIVER: What's the relevance?

19 EXAMINER PRICE: Sustained.

20 Q. (By Mr. Ireland) One of the outcomes from
21 this proceeding, whether or not the Reconciliation
22 is -- Rider is bypassable, may benefit IGS
23 financially; is that right?

24 A. Can you repeat the question, please?

25 Q. Yeah. One of the possible outcomes from

1 this proceeding, whether or not the Reconciliation
2 Rider is bypassable, that may benefit IGS
3 financially; is that right?

4 A. It could.

5 Q. And if it benefits IGS financially, it
6 may benefit you financially; is that right?

7 A. To the extent I am an employee of IGS and
8 IGS is a successful company, that benefits the
9 employees.

10 Q. And also to the extent you are the owner
11 of IGS?

12 MR. OLIKER: Objection. No foundation
13 that he's an owner of IGS.

14 A. I am not an owner of IGS.

15 Q. Are you a beneficiary of any trusts?

16 A. Yes.

17 Q. And if IGS benefits financially, do you
18 benefit financially in any capacity other than as an
19 employee?

20 A. Yes.

21 Q. You're not an economist; is that right?

22 MR. OLIKER: Objection.

23 EXAMINER PRICE: Grounds?

24 MR. OLIKER: Very vague question on
25 whether somebody is classified as an economist or

1 whether they have economic training.

2 EXAMINER PRICE: Do you have a Ph.D. in
3 economics?

4 THE WITNESS: I have business training in
5 economics, but I don't have a Ph.D.

6 EXAMINER PRICE: Do you have a Master's
7 Degree in economics?

8 THE WITNESS: I have a Master's Degree in
9 business.

10 EXAMINER PRICE: Do you hold yourself out
11 as an economist?

12 THE WITNESS: I don't have it on my
13 business card.

14 Q. (By Mr. Ireland) And you believe, as I
15 understand it, that your expertise is in the business
16 aspects of retail energy; is that right?

17 A. Part of my expertise.

18 Q. What's the other part of your expertise?

19 A. The business and legal aspects and the
20 regulatory aspects.

21 Q. And IGS is a competitive retail electric
22 supplier; is that right?

23 A. Yes.

24 Q. And you are testifying only on behalf of
25 IGS here today; is that right?

1 A. Yes. I believe that's what my testimony
2 says.

3 Q. And as part of this proceeding, you have
4 also submitted testimony in support of the Amended
5 Stipulation on behalf of RESA and IGS; is that right?

6 A. Can you please repeat the question?

7 Q. As part of this proceeding, you also
8 submitted testimony in support of the Amended
9 Stipulation on behalf of RESA and IGS; is that right?

10 A. I'm not clear what you are trying to say.
11 Are you saying that the Amended Stipulation -- the
12 amended order by the PUCO or the Amended Stipulation?

13 Q. The Amended Stipulation that was
14 litigated prior to the initiation of this case. I
15 can show you RESA Exhibit 1, if that will help you.

16 A. No. I don't think that's necessary. I
17 believe that, yes, you are correct, I did file
18 testimony. And the previous testimony I filed was on
19 behalf of both RESA and IGS.

20 Q. And two years ago that testimony that was
21 filed on behalf of RESA and IGS did not say that the
22 Amended Stipulation was not in the public interest;
23 is that right?

24 A. I don't know.

25 MR. IRELAND: Well, your Honor, I have

1 his testimony if he would like to take a look at it.

2 EXAMINER PRICE: You may approach. Help
3 him refresh his recollection.

4 A. Did you want me to read the whole thing?

5 Q. You wrote it. Maybe it's been a couple
6 of years since you read it but is there anything in
7 there where you testified that the Amended
8 Stipulation is not in the public interest?

9 MR. OLKER: Objection.

10 A. I don't know.

11 EXAMINER PRICE: Grounds?

12 MR. OLKER: Your Honor, this testimony
13 covers certain aspects of the Stipulation and a prior
14 period of time when IGS was still a signatory. IGS
15 is no longer a signatory, so I think it's misleading.

16 EXAMINER PRICE: Excellent coaching of
17 the witness. Overruled.

18 A. If you would allow me to read the entire
19 testimony, then I can answer that question, but I
20 can't answer that question unless I read the
21 testimony that I wrote over two years ago.

22 Q. Is that testimony that you submitted over
23 two years ago still truthful?

24 A. Yes.

25 Q. And it's accurate?

1 A. Based on the facts over two years ago,
2 yes.

3 Q. And IGS is a member of RESA; is it not?

4 A. Yes.

5 Q. And you are the president of RESA, are
6 you not?

7 A. Yes.

8 Q. And has RESA withdrawn from the Amended
9 Stipulation?

10 A. I don't believe they have.

11 Q. Do you know how many members of RESA
12 there are in Ohio?

13 A. I don't know.

14 Q. Is AEP Energy a member?

15 MS. PETRUCCI: Objection, relevance.

16 EXAMINER PRICE: Overruled.

17 A. To the extent it's publicly available on
18 the RESA website, AEP is a member of the RESA
19 National Organization, AEP Ohio.

20 Q. How about APG&E?

21 A. Again, it's publicly available on the
22 website. I don't know every specific member of RESA,
23 but you are welcome to go check the website.

24 Q. Well, I have checked the website. I am
25 just now checking your understanding as the president

1 of RESA as to who are the Ohio members.

2 A. Sure. They're national members. I don't
3 know every member of RESA. There's a lot but.

4 Q. And I am only concerned with the ones in
5 Ohio.

6 A. RESA is a national organization. It's
7 not necessarily a state-specific organization.

8 Q. And you are the president of the national
9 organization; is that right?

10 A. Yes.

11 Q. Well, would you agree with me that the
12 RESA website accurately describes the members of RESA
13 who are operating -- that are operating in Ohio?

14 MR. OLIVER: Objection. Now we are
15 getting into asking about websites that aren't in
16 front of us and whether Mr. White can --

17 EXAMINER PRICE: He referred to the
18 website earlier in his cross-examination. Overruled.

19 MR. OLIVER: And, your Honor, also he
20 said who are active in Ohio, and I don't know if that
21 is the exact same response that Mr. White provided.

22 EXAMINER PRICE: That's why he asked him
23 the question, to find out if that's accurate.
24 Overruled.

25 Can we have the question back again,

1 please.

2 (Record read.)

3 A. No.

4 Q. And why not?

5 A. Because the members of RESA, the national
6 organization, are not necessarily all operating in
7 Ohio.

8 MR. IRELAND: May I approach the witness,
9 your Honor?

10 EXAMINER PRICE: You may.

11 MR. IRELAND: Unfortunately I only have
12 one copy, but we can make copies at a break. This is
13 just the RESA website.

14 MR. OLIKER: Is this what you were
15 referring to before? Is this supposed to be about
16 Ohio?

17 MR. IRELAND: RESA's members in Ohio are
18 and then there is this list.

19 MR. OLIKER: Okay.

20 Q. (By Mr. Ireland) Mr. White, that is, I
21 will represent to you, RESA's website, a copy of a
22 portion of it with a list of members in Ohio.

23 A. I'm sorry. Can you point?

24 Q. Yeah.

25 MR. OLIKER: And I would just ask that he

1 be given time to look at it because I don't know if
2 he has seen this page of the website.

3 MR. IRELAND: Absolutely.

4 A. Okay. Yeah, I see it.

5 Q. And to the best of your knowledge, are
6 those RESA members in Ohio?

7 A. I don't update the website; but, you
8 know, to the extent it is up to date, I take the
9 website's word for it.

10 Q. You don't have any reason to disagree
11 with the information that's on the website, do you?

12 A. I have no reason to believe it's not up
13 to date.

14 Q. Thank you.

15 MR. IRELAND: And we'll provide copies,
16 your Honor. We'll mark this as, where are we, DP&L?

17 MR. SHARKEY: Is 1001.

18 MR. IRELAND: 1001.

19 EXAMINER PRICE: It will be so marked.

20 (EXHIBIT MARKED FOR IDENTIFICATION.)

21 EXAMINER PRICE: And you will get
22 especially the court reporter a copy at some
23 appropriate time.

24 MR. IRELAND: Yeah. Actually I put the
25 wrong document. I'll trade you.

1 MR. OLIKER: Before we go to redirect, I
2 would also like a copy of the document in case it's
3 necessary because I have not seen it yet.

4 EXAMINER PRICE: I am sure the Company
5 will provide a copy.

6 Q. (By Mr. Ireland) In your -- with regards
7 to SmartGrid, Mr. White, you would agree that a
8 properly executed SmartGrid has potential to benefit
9 customers; is that right?

10 A. Yes.

11 Q. And SmartGrid will improve the landscape
12 of the competitive retail electric service market in
13 DP&L's service territory; is that right?

14 A. It has the potential to if properly
15 deployed.

16 Q. And nothing has changed between March
17 2017 and today to alter your belief that a properly
18 executed SmartGrid has a potential to benefit DP&L's
19 customers; is that right?

20 A. Yes.

21 Q. And again referring to your March 2017
22 testimony, you are supportive of consolidated
23 billing; is that right?

24 MR. OLIKER: Objection.

25 EXAMINER PRICE: Grounds?

1 MR. OLIKER: I believe there was an error
2 in the question.

3 EXAMINER PRICE: If you can rephrase your
4 question more specifically as to what type of
5 consolidated billing.

6 Q. At page 8 of your March 2017 testimony,
7 there's a section entitled "Retail Market Billing
8 Enhancements."

9 A. Yes.

10 Q. And it says Question: "Should DP&L
11 implement a supplier consolidated billing pilot
12 program?" Do you see that?

13 A. Yes.

14 Q. And you are still supportive of that
15 Supplier Consolidated Billing Program today; is that
16 right?

17 A. I support a program that's properly
18 implemented.

19 Q. And you would agree that all of DP&L's
20 customers have a potential to benefit from
21 consolidated billing; is that right?

22 A. If it's properly implemented, yes.

23 Q. Now, in this proceeding, as I understand
24 it, IGS has withdrawn from the Amended Stipulation,
25 right?

1 A. Yes.

2 Q. And the withdrawal was based upon a
3 material modification by the Commission; is that
4 right?

5 A. Yes.

6 Q. And the material modification is the
7 recovery of the OVEC Cost Mechanism Reconciliation
8 Rider going from a bypassable to a nonbypassable
9 cost; is that right?

10 A. Yes. When the Commission modified the
11 Stipulation to make OVEC bypassable -- or
12 nonbypassable, that was a material modification.

13 Q. And you would agree that there are
14 other -- elements of the Amended Stipulation that
15 provide potential benefits to IGS aside from the
16 Reconciliation Rider.

17 A. I believe that the Reconciliation Rider
18 bypassable -- passable was by far the most important
19 provision that was negotiated by the parties or by
20 IGS.

21 MR. MICHAEL: Objection, your Honor. I
22 move to strike that answer. It was nonresponsive to
23 the question asked by DP&L's lawyer.

24 EXAMINER PRICE: It was nonresponsive,
25 and we will warn the witness. We will not strike his

1 testimony at this time. So please answer counsel's
2 questions directly and only counsel's questions and
3 to ask you to answer this question again.

4 Can we have this one back, please.

5 (Record read.)

6 A. I believe there are other elements that
7 provide potential benefits, but the Reconciliation
8 Rider was the only one that provided a tangible
9 benefit.

10 Q. So in entering into the Amended
11 Stipulation, IGS did so with the understanding that
12 there were potential benefits to it, correct?

13 A. Yeah, when I -- when I'm saying if
14 properly executed or if -- if, you know, rolled out
15 correctly, all the other benefits were contingencies.
16 The Reconciliation Rider was the only actual tangible
17 benefit within that stipulation.

18 EXAMINER PRICE: Mr. White, are you
19 saying if the Commission modified the Stipulation
20 again after this hearing and removed the Supplier
21 Consolidated Billing Program, that would not be a
22 tangible benefit of the Stipulation?

23 THE WITNESS: The Supplier Consolidated
24 Billing Program still has to be implemented. There's
25 a lot of different -- different elements to it that

1 could make it a successful or not successful program
2 if it's not implemented correctly. There is a cost
3 component. There's a lot of timing issues when it
4 comes down to it. So it's not a bird in the hand, if
5 you will. You know, it's a great possibility of
6 being successful, but it is certainly not guaranteed.

7 EXAMINER PRICE: How about the
8 non-commodity billing provisions? Is that a tangible
9 benefit?

10 THE WITNESS: My understanding is there
11 was no -- no, because the DP&L still has to file an
12 application to bill for non-commodity billing, and
13 DP&L hasn't even done that yet. The Commission would
14 have to approve that application so there's a lot of
15 up in the air as to whether or not that actually will
16 take place.

17 EXAMINER PRICE: So if the Commission
18 modified the Stipulation to remove those two
19 provisions, those changes would not be material,
20 would they?

21 THE WITNESS: I don't know, because it
22 hasn't happened, whether we would consider that
23 material enough to withdraw from the Stipulation. I
24 only know that when we were negotiating that
25 Stipulation, the most important part of that

1 Stipulation was whether or not OVEC was bypassable
2 for us. And when the Commission modified that
3 Stipulation to make it a nonbypassable charge, that
4 was in our view a very serious change to the deal in
5 which we bargained for.

6 Q. (By Mr. Ireland) Have you quantified the
7 increase in costs associated with that very serious
8 change?

9 MR. OLIKER: Objection. Increase of
10 costs to who and which change are we talking about?

11 Q. (By Mr. Ireland) Well, the
12 nonbypassability adds an element of cost to shopping
13 customers, does it not, Mr. White?

14 A. Yes. Our customers will have to pay more
15 because they have to pay for OVEC.

16 Q. And because of the Commission's action
17 have you quantified the increase in costs to your
18 customers?

19 A. I have not done a direct analysis.

20 Q. Has anyone at IGS done a direct analysis?

21 A. I don't know.

22 Q. Turning to OVEC you understand that DP&L
23 is a partial owner of OVEC?

24 A. That's my understanding.

25 Q. DP&L -- there has been testimony in this

1 proceeding, I don't think you were here, that DP&L's
2 interest is 4.9 percent.

3 A. Okay. I'll take your word for that.

4 Q. And under the OVEC operating agreement,
5 parties can transfer their interests only if all of
6 the other -- all of the other remaining parties
7 agree. Do you understand that?

8 MR. OLIKER: Objection.

9 EXAMINER PRICE: Grounds?

10 MR. OLIKER: Calls for a legal
11 conclusion, although -- I will withdraw the
12 objection. Mr. White is capable of answering this.

13 A. I don't think that's necessarily true.

14 Q. Have you read the operating agreement?

15 A. I believe I have read it, certain
16 portions of the operating agreement, at some point in
17 time.

18 Q. And it's your understanding, your
19 recollection, your memory of the agreement that that
20 is not the case?

21 A. My memory of the agreement is they can
22 transfer an asset to an affiliated company without
23 the -- without the approval of all the operating
24 members as long as that affiliated company has a
25 creditworthiness, meets the creditworthiness

1 standard, which is the same creditworthiness of the
2 entity that's currently owning it. So they could
3 transfer -- DP&L could transfer OVEC to AES with no
4 issue under the operating agreement. That's my
5 understanding of the operating agreement.

6 Q. Did you review the operating agreement
7 prior to writing your testimony in this case?

8 A. I don't know if I have reviewed it prior
9 to operating -- reading -- writing my testimony.
10 I've at some point in my -- my career read the
11 operating agreement because this issue has been
12 litigated ad nauseam not just for DP&L but for AEP,
13 FirstEnergy, and a number of the other utilities.

14 Q. Do you know what efforts DP&L has made to
15 transfer its interests in OVEC?

16 A. I would say probably not enough.

17 EXAMINER PRICE: You don't know enough?

18 THE WITNESS: No. I would say they
19 probably haven't made enough effort because they
20 don't have to because the Commission just continues
21 to allow them to get cost recovery.

22 Q. But do you of your own knowledge know
23 what DP&L has done?

24 A. I don't know specifically what DP&L has
25 done.

1 Q. Have you read what DP&L has reported to
2 the PUCO on this subject?

3 A. I don't know exactly what DP&L has
4 reported to the PUCO.

5 Q. On page 4 of your testimony, your current
6 testimony in this case, you say -- page 4, line 6,
7 you talk about the recovery of costs through DP&L's
8 Fuel Rider. Do you see that?

9 A. Yes.

10 Q. And you would agree that DP&L no longer
11 has a Fuel Rider; is that right?

12 A. Yes, I believe that's correct.

13 Q. You would agree with me, Mr. White, that
14 it's important for DP&L to maintain its financial
15 integrity?

16 A. Are you talking about DPL or DP&L Inc. --
17 DPL Inc. and DP&L?

18 Q. I am talking about DP&L and DPL Inc.

19 MR. OLICKER: Objection, compound.

20 EXAMINER PRICE: Sustained. You need --

21 Q. I'm talking about let's take them -- is
22 it important for DP&L to maintain its financial
23 integrity?

24 A. I think it is important, and they do have
25 strong financial -- DP&L has strong financial

1 integrity on their own without additional cost
2 recovery.

3 Q. In fact, you think there is very little
4 linkage between the financial integrity of DP&L and
5 the financial integrity of DPL; is that right?

6 A. I would say that there's probably no
7 linkage between the financial integrity of DPL Inc.
8 and DP&L.

9 Q. Probably no or no?

10 A. I would say probably no.

11 Q. Okay. Are you familiar with the credit
12 rating -- agency rankings?

13 A. I'm familiar with credit rating agencies;
14 and, yes, you know, that they approach certain
15 rankings for entities.

16 Q. Right. So I didn't mean to interrupt
17 you. And IGS is not rated by any credit agency; is
18 that right?

19 A. Yes.

20 Q. So you don't meet with credit agencies in
21 the ordinary course of your work as the chief legal
22 counsel of IGS; is that right?

23 A. I don't.

24 Q. And you don't think whether or not DPL
25 Inc. is investment grade has any effect on DP&L's

1 financial integrity; is that right?

2 A. Yes.

3 Q. And you further believe that credit
4 agencies are only focused on the distribution
5 utility.

6 A. I believe that is their primary focus.

7 Q. And would their secondary focus be on the
8 Company that owns the distribution utility?

9 A. Their focus could be if the right
10 provisions weren't put in place like ring fencing.

11 Q. And you have not done any analysis of how
12 the credit agencies have viewed DP&L and DPL over the
13 years; is that right?

14 A. I have reviewed how the Commission -- how
15 the credit agencies handled the Oncor bankruptcy
16 which is a very similar bankruptcy to the -- to --
17 which is a very similar situation to DPL in that you
18 had a parent company that went insolvent and the
19 credit rating agencies, because they had proper ring
20 fencing in place, did not ding the distribution
21 utility one bit when the parent company went
22 bankrupt.

23 EXAMINER PRICE: Can I have the question
24 and answer back, please.

25 MR. IRELAND: For whatever it is worth I

1 want to move to strike the answer.

2 EXAMINER PRICE: I want to hear what the
3 question was after the lengthy answer.

4 (Record read.)

5 EXAMINER PRICE: Mr. Ireland.

6 MR. IRELAND: I move to strike the answer
7 as nonresponsive and irrelevant.

8 MR. OLIKER: Your Honor, did he say no
9 before he provided his explanation though? I thought
10 that's what I heard.

11 EXAMINER PRICE: He did not. Do you care
12 to respond to the motion to strike?

13 MR. OLIKER: I think that his response
14 inferred no, and he said also but clarified that he's
15 familiar with very similar circumstances. If
16 Mr. Ireland wants to reask the question and then we
17 can have a complete answer, perhaps maybe I would
18 withdraw my opposition to the strike.

19 EXAMINER PRICE: We've already warned
20 this witness to answer counsel's question and only
21 counsel's question. The motion to strike will be
22 granted at this -- if you would like an answer to
23 your question, Mr. Ireland, or are you moving on?

24 MR. IRELAND: I'm moving on.

25 Q. (By Mr. Ireland) You have not done a

1 financial analysis of the effect of the DMR on DP&L;
2 is that right?

3 A. DPL Inc.?

4 Q. DP&L.

5 A. DP&L.

6 MR. OLIKER: Objection. The question is
7 vague on what is meant by financial analysis.

8 EXAMINER PRICE: Overruled. He has an
9 MBA. He knows what financial analysis is.

10 A. I haven't done a financial analysis.

11 Q. At the bottom of page 4 of your
12 testimony, you talk about Mr. Haugen, and you say
13 that Mr. Haugen -- this is in line 16 and 17 has
14 identified, proposed changes to the capacity market
15 that may disqualify DP&L from participating in the
16 PJM market. Do you see that?

17 A. Yes.

18 Q. And that's a proposal that's been
19 submitted to FERC; is that right?

20 A. Yes.

21 Q. And you would agree that the proposed
22 changes are not in effect at this time; is that
23 right?

24 A. Yes.

25 Q. Moving over to page 7 of your testimony,

1 you complain about unreasonable fees. Do you see
2 that section?

3 A. I would not characterize it as
4 complaining.

5 Q. That's fair. That's fair, Mr. White.
6 You present testimony about unreasonable fees, how's
7 that?

8 A. Yes.

9 Q. And DP&L has indicated the \$5 switching
10 fee is based upon the Commission's order from Case
11 No. 12-426-EL-SSO that's in your testimony, right?

12 A. I'm sorry. Can you repeat the question?

13 Q. Yeah. DP&L has indicated that the \$5
14 switching fee is based upon the Commission's order
15 from Case 12-426-EL-SSO; is that right?

16 A. Yes. In their discovery response they
17 claim that was the basis for the \$5 switching fee.

18 Q. And they've been consistently charging
19 that \$5 switching fee since the order in that case;
20 is that right?

21 A. I believe they've charged it before that
22 case. I don't think that was really the case that
23 set the switching fee.

24 Q. Okay. So longer than since Case No.
25 12-426 to the best of your knowledge.

1 MR. OLIVER: Objection. I've let this go
2 on a little bit, but it's hard to tell who we are
3 talking about the switching fee assessed to. Are we
4 just talking about it globally? And that's not what
5 the testimony is about and it's unclear in either the
6 questions or the answers how we are referring to the
7 switching fee.

8 EXAMINER PRICE: I don't understand your
9 objection.

10 MR. OLIVER: The question is vague and
11 there hasn't been a foundation for who we're talking
12 about as being imposed a switching fee because
13 Mr. White talks about a certain set of scenarios and
14 that is not clear based on this transcript and the
15 questions and answers referred.

16 EXAMINER PRICE: If you can rephrase,
17 Mr. Ireland.

18 Q. (By Mr. Ireland) The \$5 switching fee, as
19 I understand your testimony, Mr. White, has -- has
20 existed at least since Case No. 12-426-EL-SSO; is
21 that right?

22 A. Yes.

23 Q. And your recollection is it probably
24 existed prior to that case.

25 A. It existed -- that case switched the

1 switching fee to allow the supplier to pay for it but
2 there was a \$5 switching fee that the customer had to
3 pay before that case.

4 Q. Thank you. And on page 8 of your
5 testimony, you mentioned the \$150 historical usage
6 fee which you believe is unreasonable; is that right?

7 A. Yeah.

8 Q. And you have not done any analysis of
9 what a reasonable fee would be; is that right?

10 A. We've asked Dayton Power and Light in
11 discovery to provide an analysis of what a reasonable
12 fee would be, and they haven't. It's really not in
13 our place to -- to do the analysis because Dayton
14 Power and Light has the costs, but they have not
15 actually provided any basis for that fee.

16 Q. So the answer to my question is, no, IGS
17 has not done any analysis of what a reasonable fee
18 should be; is that right?

19 A. I think, yeah, I have done analysis that
20 the reasonable fee should be zero.

21 Q. And a reasonable fee should be zero
22 because there are no costs associated with it?

23 A. Well, because there's no additional
24 charges to the SSO or the default service to provide
25 a fee. In my view there would be no variable costs

1 to -- to transfer electronic data to a -- to a
2 supplier that requests it, so yes.

3 Q. So you are assuming there were no
4 variable costs and no costs whatsoever.

5 A. Since we've asked DP&L about the costs
6 and they haven't provided any information on the
7 costs, I would assume that there are no costs because
8 if there were costs, likely DP&L would have provided
9 that information about the costs.

10 EXAMINER PRICE: Mr. White, is there a
11 pending motion to compel discovery that I do not know
12 about?

13 THE WITNESS: I'll defer to my lawyer.

14 MR. OLIKER: Can I make one?

15 EXAMINER PRICE: So the answer to my
16 question, Mr. Oliker, is, no, there is no pending
17 motion to compel?

18 MR. OLIKER: No, and, your Honor, I don't
19 believe one would be merited given that typically
20 speaking if an analysis does not exist, you cannot
21 require a party to perform one. So under current
22 precedent and Commission rules, I don't think that
23 would be something that would be supportable.

24 EXAMINER PRICE: So you're disagreeing
25 with your own witness of Dayton Power and Light's

1 failure to produce such information?

2 MR. OLIKER: No. I'm indicating that a
3 motion to compel would likely not bear fruit.

4 A. They just didn't provide the costs, so
5 I'm inferring because they haven't provided the costs
6 there are no costs.

7 EXAMINER PRICE: There is no question
8 pending, Mr. White.

9 THE WITNESS: Sorry.

10 EXAMINER PRICE: We'll strike that last
11 bit of extraneous testimony.

12 Please proceed, Mr. Ireland.

13 MR. IRELAND: Thank you, your Honor.

14 Q. (By Mr. Ireland) On page 9 of your
15 testimony, in lines 4 to 6, you say that "these fees
16 have added up to millions of dollars over the past
17 few years." Do you see that?

18 A. What line are you referring to on page 9?

19 Q. Page 9, line 5.

20 A. Yes, I see that.

21 Q. And you have not done any -- excuse me.
22 And then you go on to say that the costs are cost
23 prohibitive. Do you see that?

24 A. I say it in many instances they can be
25 cost prohibitive.

1 Q. And you don't know the number of times
2 this actually happens with a customer of IGS, right?

3 A. I know it happens frequently because we
4 get complaints about the costs.

5 EXAMINER PRICE: Who is "we," Mr. White?

6 THE WITNESS: Well, the people selling
7 the energy and also the customers.

8 Q. Is that part of your job as the chief
9 legal officer, to sell?

10 A. No. But I talk to the people that are
11 selling.

12 Q. On the top -- on page 6 of your
13 testimony, you say that "To the extent that DPL's
14 cash flows are insufficient to cover DPL's debt
15 expenses, AES will have no other option then to
16 provide an equity infusion to DPL." Do you see that?

17 MR. OLICKER: Could you repeat the page
18 and line?

19 MR. IRELAND: It's the top of page 6.
20 It's the answer that starts at line 1, Joe. Sorry.

21 Q. (By Mr. Ireland) Are you with me?

22 A. Yes, I see that.

23 Q. And you also believe that another option
24 for DP&L would be bankruptcy, right?

25 MR. OLICKER: Objection. I think there

1 was an error in the question again. I think he said
2 "DP&L."

3 EXAMINER PRICE: Can I have the question
4 back, please.

5 (Record read.)

6 MR. OLIKER: I think it misstates the
7 testimony.

8 EXAMINER PRICE: He can explain that.

9 A. I would say -- I believe that an option
10 is not for DP&L to go bankrupt but DPL Inc., the
11 parent company, to go bankrupt.

12 Q. And you don't believe that a bankruptcy
13 of DPL would have any effect on the financial
14 integrity of DP&L; is that correct?

15 A. Yes.

16 Q. And as to bankruptcies, you have not made
17 any analysis of how the bankruptcy process would
18 affect DPL or DP&L; is that right?

19 A. At the risk of getting stricken again, my
20 analysis is based on my view of what other companies
21 have done where the parent company has gone bankrupt
22 and the current distribution utility had no effect on
23 the credit rating of the distribution utility -- the
24 distribution utility credit rating did not sour when
25 the parent company went bankrupt.

1 Q. Has that occurred in Ohio?

2 A. It has occurred in Texas which is Oncor
3 where the parent company went bankrupt. And, in
4 fact, it actually probably is even more extreme
5 because AES is the ultimate holding company of DP&L.
6 DPL Inc. is just a company in the middle. And the
7 Oncor bankruptcy, the actual parent company, the
8 holding company, went bankrupt, and Oncor, the
9 distribution utility, had no effect on the credit
10 rating.

11 MR. IRELAND: Move to strike, your Honor.
12 The question was has that occurred in Ohio.

13 EXAMINER PRICE: Granted.

14 Q. Has that occurred in Ohio?

15 A. No.

16 EXAMINER PRICE: Mr. White, is DP&L a
17 competitor to IGS?

18 THE WITNESS: The distribution utility?

19 EXAMINER PRICE: Yeah.

20 THE WITNESS: No.

21 EXAMINER PRICE: Is DPL a competitor of
22 IGS?

23 THE WITNESS: In some instances, yes. I
24 mean through AES, AES sells a number of products and
25 services that we sell, whether it's distributed

1 generation, batteries, other products and services,
2 yeah.

3 EXAMINER PRICE: That's not what I asked.
4 Does DPL compete with IGS?

5 THE WITNESS: I think DPL is purely a
6 holding company to hold assets, so I don't know if
7 DPL does anything -- DPL Inc. doesn't do anything
8 other than, you know, hold DP&L, the distribution
9 utility.

10
11 EXAMINER PRICE: So your testimony is,
12 no, DPL does not compete with IGS.

13 THE WITNESS: Well, I can't say that
14 exactly because to the extent that DPL Inc. affects
15 the financial viability of AES and basically the
16 Commission or whomever the ratepayers are deciding to
17 give funds to DPL which eventually would affect the
18 holding company AES, then there is competent -- there
19 is a connection of competition there.

20 EXAMINER PRICE: You are aware during the
21 term of the DMR DPL will not make any dividend
22 payments to AES.

23 THE WITNESS: Yes, but I think that's
24 misleading. Hey, I'll pay off your loans, but I am
25 not going to give you the cash directly. It's still

1 a financial benefit to AES.

2 EXAMINER PRICE: That's not the question
3 asked so we will strike your extraneous answer. You
4 are aware that during the term of the DMR DPL will
5 not make any dividend payments to AES.

6 THE WITNESS: They will not make any
7 direct payments to AES, but AES will reap the
8 financial benefit.

9 EXAMINER PRICE: So I guess I still want
10 a more direct answer to my question. In what areas
11 does DPL Inc. compete with IGS?

12 THE WITNESS: Literally DPL Inc. probably
13 does not compete directly with IGS.

14 EXAMINER PRICE: In any manner.

15 THE WITNESS: If you look at just the
16 Company's vehicle -- the vehicle of the Company does
17 not compete with IGS.

18 EXAMINER PRICE: Thank you.

19 MR. IRELAND: Thank you, your Honor. I
20 have nothing further, although I do have copies of
21 what we are going to mark as DP&L 1001.

22 EXAMINER PRICE: You do have copies?
23 Give one to the Bench and to Mr. Olier at this time.

24 Mr. Boehm?

25 MR. BOEHM: No questions, your Honor.

1 EXAMINER PRICE: Mr. Alexander?

2 MR. ALEXANDER: No questions, your Honor.

3 EXAMINER PRICE: OMAEG?

4 MR. DRESSEL: No questions, your Honor.

5 EXAMINER PRICE: Kroger?

6 MS. WHITFIELD: No questions, your Honor.

7 EXAMINER PRICE: Mr. Michael?

8 MR. MICHAEL: Thank you, your Honor.

9 - - -

10 CROSS-EXAMINATION

11 By Mr. Michael:

12 Q. Mr. White, you are aware that Duke has an
13 OVEC rider, correct?

14 MR. OLIKER: Objection.

15 EXAMINER PRICE: Grounds?

16 MR. OLIKER: What's the relevance?

17 EXAMINER PRICE: Overruled.

18 MR. IRELAND: Your Honor, we would like
19 to have a continuing objection to questions from OCC
20 just on the standing issue that we raised on the
21 first day of hearing by Mr. Sharkey. They have
22 appealed from this case and are now in the Supreme
23 Court of Ohio. They can't be making a new record for
24 themselves here.

25 EXAMINER PRICE: I note your continuing

1 objection. I believe the Commission still has
2 jurisdiction over this case, and I am waiting with
3 curiosity the disposition of OCC's appeal of this
4 case at this time as the Commission still has
5 jurisdiction over this case.

6 Please proceed, Mr. Michael.

7 MR. MICHAEL: Thank you, your Honor.

8 EXAMINER PRICE: Actually, Mr. Michael,
9 since you were interrupted, I should have called on
10 RESA before you and actually before even the Company
11 because of they are not going to engage in friendly
12 cross, but they will have their opportunity now as
13 long as it's not friendly.

14 MS. PETRUCCI: I have no questions, your
15 Honor.

16 EXAMINER PRICE: Thank you.

17 Mr. Michael, now back to you.

18 MR. MICHAEL: Thank you, your Honor.

19 Q. (By Mr. Michael) Mr. White, I believe my
20 pending question was that you were aware that Duke
21 has an OVEC rider, correct?

22 A. Yes, I believe that they do.

23 Q. And you are also aware that AEP has an
24 OVEC rider, correct?

25 A. Yes.

1 Q. And you are aware that both the Duke OVEC
2 rider and the AEP OVEC rider are nonbypassable,
3 correct?

4 MR. OLIKER: Objection.

5 EXAMINER PRICE: Grounds?

6 MR. OLIKER: Reassert the objection that
7 I believe each of those cases was the product of a
8 Stipulation which was held to be nonbinding in other
9 cases.

10 EXAMINER PRICE: Held to be nonbinding.

11 MR. OLIKER: For precedential effect.

12 EXAMINER PRICE: Was IGS a signatory
13 party on either of those Stipulations?

14 MR. OLIKER: I don't know if that
15 matters, your Honor.

16 EXAMINER PRICE: Sure, it does.

17 MR. OLIKER: The language says the
18 document itself is nonbinding.

19 EXAMINER PRICE: Against parties to the
20 document. And in any event it is nonbinding on the
21 Commission, so your objection is overruled.

22 MR. OLIKER: Thank you.

23 A. Can you repeat the question, please?

24 MR. MICHAEL: Karen, could you please
25 read it back.

1 (Record read.)

2 A. I believe that's the case.

3 Q. And you are also aware, Mr. White, that
4 the PUCO has a standing policy, if not formal,
5 informally to treat Ohio utilities equal across the
6 board, correct?

7 MR. OLIKER: Objection. I don't think
8 Mr. White can speak for the Commission.

9 MR. MICHAEL: I mean, he is a lawyer. He
10 is the chief legal officer of IGS Energy. I think he
11 knows PUCO precedent.

12 EXAMINER PRICE: He does but you asked --
13 your question is is there a standing policy, and I
14 believe that he is in no position to speak to the
15 Commission's standing policy.

16 MR. MICHAEL: I will rephrase your Honor.
17 Thank you.

18 Q. (By Mr. Michael) Mr. White, you're aware
19 that PUCO precedent is that the Commission generally
20 treats Ohio utilities that it regulates consistently
21 across the board, correct?

22 A. I don't know if I would necessarily
23 characterize it that way. I feel like the PUCO takes
24 the facts and circumstances into consideration based
25 on the specific utility and doesn't necessarily

1 provide blanket rules for everyone.

2 Q. What is the percent of customers in the
3 DP&L territory that shop?

4 A. I'm sorry. Can you repeat the question?

5 Q. Certainly. What is the percent of
6 customers in DP&L's service territory that shop?

7 MR. OLIKER: Objection.

8 EXAMINER PRICE: Grounds?

9 MR. OLIKER: Type of customers? Total
10 customers? Residential customers?

11 EXAMINER PRICE: Total customers.

12 MR. OLIKER: Is that the Bench's
13 clarification?

14 MR. MICHAEL: Come on.

15 EXAMINER PRICE: Mr. Michael, would you
16 accept my clarification?

17 MR. MICHAEL: I do.

18 EXAMINER PRICE: Yes, total customers.

19 A. I don't know the exact percentage.

20 Q. Do you know an approximate percentage?

21 A. I don't know -- I mean, I think it might
22 be around 50 percent, but I don't know 100 percent --

23 Q. Okay.

24 A. -- what that percentage is.

25 Q. Whatever that percentage is, Mr. White,

1 were the Commission to make the Reconciliation Rider
2 bypassable, the costs that those shopping customers
3 would otherwise pay would be shifted onto SSO
4 customers, correct?

5 A. Not necessarily. You know, the
6 Commission could just say DP&L doesn't get any
7 recovery.

8 Q. You and I would both like that but let's
9 assume for the purpose of my question that the PUCO
10 allows the Reconciliation Rider, okay? Will you
11 accept that for my question?

12 A. Sure. So perhaps but the PUCO modified
13 the order already. They could modify it in such a
14 way to the extent that there is a certain threshold
15 that -- that the prices get too high for the SSO, or
16 they can then shift it back to be a bypassable -- or
17 nonbypassable rider.

18 Q. Your testimony in this case though is
19 simply that the Commission should make the
20 Reconciliation Rider bypassable for all shopping
21 customers, correct?

22 A. My testimony is the Commission should
23 honor the Stipulation that was entered into by the
24 parties.

25 EXAMINER PRICE: Mr. White, can you

1 please turn to page 5, line 3.

2 THE WITNESS: Sure.

3 EXAMINER PRICE: And line 4 through 7.

4 THE WITNESS: Yes.

5 EXAMINER PRICE: Now, does that refresh
6 your recollection as to what your testimony is in
7 response to Mr. Michael's question?

8 THE WITNESS: Yeah. I think my answer is
9 accurate though that was part of the Stipulation that
10 was entered into by the parties was to make rider RR
11 bypassable.

12 Q. Okay. And then, Mr. White, were the
13 Commission to make the Reconciliation Rider
14 bypassable, the amount of the Reconciliation Rider
15 that shopping customers would otherwise have paid
16 would be shifted to SSO customers, correct?

17 A. Yes.

18 Q. And as a result, SSO customers would pay
19 more in their rates, correct?

20 MR. OLIKER: Objection.

21 EXAMINER PRICE: Grounds?

22 MR. OLIKER: I think it's asked and
23 answered.

24 EXAMINER PRICE: Overruled.

25 A. The net effect to all customers would be

1 revenue neutral, but yes.

2 MR. MICHAEL: I move to strike the first
3 part of that response, your Honor, just -- and keep
4 the "yes" part.

5 EXAMINER PRICE: We will give Mr. White a
6 little bit of leeway on this one.

7 MR. MICHAEL: Thank you, your Honor.

8 Q. (By Mr. Michael) And following up on
9 that, Mr. White, as -- were more and more customers
10 to shop, the percentage paid by individual SSO
11 consumers would increase were the Reconciliation
12 Rider made bypassable, correct?

13 A. Well, not -- well, if we were successful
14 and the Commission disallows the DMR and makes OVEC
15 bypassable -- nonbypassable, the actual costs to SSO
16 customers would go down because the DMR is a much
17 higher cost to customers than what OVEC would be.

18 MR. MICHAEL: I move to strike that, your
19 Honor, as nonresponsive.

20 EXAMINER PRICE: Granted.

21 MR. MICHAEL: May I have the question
22 back with an instruction to answer my question, your
23 Honor?

24 EXAMINER PRICE: Please answer counsel's
25 question directly and only counsel's question.

1 THE WITNESS: Would you repeat the
2 question.

3 EXAMINER PRICE: If you need to add any
4 additional context, Mr. Olier will be happy to ask
5 you that on redirect.

6 Let's have the question back again.

7 (Record read.)

8 MR. OLIER: Objection. Actually
9 incomplete hypothetical.

10 EXAMINER PRICE: Overruled.

11 THE WITNESS: Can you repeat the question
12 again.

13 (Record read.)

14 A. Assuming that it was a cost, which
15 theoretically it could not be a cost, then that's
16 correct.

17 Q. Mr. White, you've heard the SSO referred
18 to as default service, correct?

19 A. Yes.

20 Q. And you've characterized it as such
21 today, correct, in your testimony?

22 A. I may have.

23 Q. And, Mr. White, that SSO is referred to
24 as default service in part because it is available to
25 all customers all the time no matter what, correct?

1 A. Can you repeat the question, please?

2 MR. MICHAEL: May I have it read back,
3 please, Karen.

4 (Record read.)

5 A. I don't know exactly why it's referred to
6 as default service. It is. That's just what it's
7 referred to.

8 Q. Okay. But you have no doubt, Mr. White,
9 that, in fact, SSO is available to all customers all
10 the time no matter what, correct?

11 A. Yes, I believe it is available to all
12 customers.

13 MR. MICHAEL: Thank you. I have no
14 further questions, your Honor.

15 EXAMINER PRICE: Mr. White, on this
16 topic, does IGS ever return customers to the Standard
17 Service Offer for nonpayment of commodity costs?

18 THE WITNESS: I don't know.

19 EXAMINER PRICE: You don't know?

20 THE WITNESS: I'll defer to -- I don't
21 know mechanically how it works.

22 EXAMINER PRICE: I didn't ask if you knew
23 mechanically how it works. I asked if you returned
24 customers to the Standard Service Offer who have not
25 paid for their generation service.

1 THE WITNESS: So to answer your question,
2 I believe that if they don't pay, we enter into a
3 checks and payment plan arrangement with them, and
4 you can probably check with Mr. Crist who is probably
5 more -- more able to answer that question. I would
6 assume that at some point we turn them back, or we
7 terminate our service with them.

8 EXAMINER PRICE: And in that case, you
9 believe the customer should have to pay a \$5
10 switching fee?

11 THE WITNESS: I believe -- I'm
12 recommending that they eliminate the switching fee
13 for everybody.

14 EXAMINER PRICE: That's not what my
15 question was. My question is in that case, do you
16 believe the customer should pay -- if the Commission
17 does not eliminate the switch fee, do you believe the
18 customer should pay a \$5 switching fee?

19 THE WITNESS: I think switching fees
20 should apply equal whether you switch to or from
21 default service.

22 EXAMINER PRICE: Does IGS have provisions
23 in its contracts that in the event of a material
24 change to laws or regulatory requirements, it can
25 return customers to the Standard -- to the default

1 service?

2 THE WITNESS: I have to read the contract
3 specifically. I think we have provisions in there
4 that say if we are not able -- no longer able to
5 serve you because of regulatory changes, then we
6 will -- you know, you'll be returned to utility
7 service or whatever mechanism exists at the time.

8 EXAMINER PRICE: And since you believe
9 the customer should have to pay the \$5 switching fee?

10 THE WITNESS: I don't know. I would have
11 to know what instance it would be where the
12 Commission -- where IGS would no longer be able to
13 serve customers like if for some reason competition
14 was eliminated in Ohio, you know, I don't know that
15 would -- I can't -- it's too much of a hypothetical
16 to be able to answer that question.

17 EXAMINER PRICE: So on page 8, line 16,
18 where you say the Commission should apply a \$5
19 switching fee when a customer returns to the SSO, you
20 have no opinion as to whether that is if IGS returns
21 the customer because IGS has abrogated the contract?

22 THE WITNESS: Well, so there's an event
23 of default where we have a right to terminate the
24 contract and I wouldn't say that's abrogating the
25 contract in the event of a default.

1 EXAMINER PRICE: I was referring to the
2 event of material change in regulatory laws or
3 regulations that materially impact your ability to
4 serve the customer which we were just discussing a
5 minute ago.

6 THE WITNESS: If it was a change that did
7 not allow us to serve the customer any more, we just
8 had -- then, no, there should not be a \$5 switching
9 fee applied to that customer. If we just couldn't
10 serve the customer and it was beyond the customer's
11 control, no. But in formal circumstances of
12 switching, which really is the case and likely to be
13 the case for the time being, then I do think if the
14 Commission is going to have a switching fee for --
15 for retail supply customers, they should also have a
16 switching fee for non -- for customers going back to
17 the SSO.

18 I think the best solution would be to
19 eliminate it all together. My only point is it's
20 inequitable to require one -- one competitor in the
21 market to have to pay the switching fee and not
22 require another product to have to pay it.

23 EXAMINER PRICE: When you enroll a
24 customer from the Standard Service Offer or when
25 customer switches from another CRES provider to you,

1 the customer receives a notice from the utility about
2 a 7-day right to rescind; is that correct?

3 THE WITNESS: Yes, I believe so.

4 EXAMINER PRICE: The customer returns to
5 the SSO service, does the customer get a 7-day right
6 to rescind?

7 THE WITNESS: The customer can leave the
8 SSO --

9 EXAMINER PRICE: When they return, when
10 IGS returns a customer, whether from nonpayment or
11 the customer's request, to Standard Service Offer
12 service, does the customer get a 7-day right to
13 rescind that, a notice and a 7-day right to rescind
14 that change?

15 MR. OLIKER: Your Honor, I don't want to
16 interject, but I think I know what you're asking.
17 And are you asking whether or not if we were to send
18 a letter where they could pick another CRES provider
19 before going to the SSO?

20 EXAMINER PRICE: I am asking if IGS
21 returns a customer to default service for any reason,
22 nonpayment, material change in the contract, contract
23 is up, does the customer get a 7-day right to rescind
24 that change?

25 THE WITNESS: Sure. I will answer the

1 question. I just want to be clear IGS does not send
2 its customer back to default service absence a breach
3 of the contract.

4 EXAMINER PRICE: I understand that.

5 THE WITNESS: We are not in that business
6 practice to do that. But that being said is there a
7 rescission period for customers that go back to
8 default service?

9 EXAMINER PRICE: Do they receive a notice
10 and a 7-day right to rescind?

11 THE WITNESS: They receive a notice. I
12 don't know the exact rules. My understanding is -- I
13 think they probably get a notice if they are
14 switching one way or another. I think there has to
15 be a notice to the customers.

16 EXAMINER PRICE: Do you know, or do you
17 think?

18 THE WITNESS: I don't know 100 percent if
19 they are going back to the SSO where they get a
20 notice. They should, I would imagine, but I don't
21 know 100 percent.

22 EXAMINER PRICE: Let's assume they do not
23 get a notice for the sake of argument. In that case
24 there is a cost when you've switched to a CRES
25 provider that's not equal to the costs when you

1 return to the SSO; is that not true?

2 THE WITNESS: Well, I don't know that
3 answer because I don't know that they don't get a
4 notice.

5 EXAMINER PRICE: I asked you to assume.

6 THE WITNESS: Okay. Assuming they get --
7 there might -- there might be a --

8 EXAMINER PRICE: Mr. Olikar.

9 THE WITNESS: If you are saying that
10 there is a -- first of all, IGS sends a notice every
11 time there's a switch, so we incur a cost every time
12 that there is a switch. We have to send a notice. I
13 believe also the utility sends a notice. There could
14 be a de minimus cost of, you know, whatever your
15 postage costs are for that notice that the utility
16 incurs.

17 Now, I would say that if there is a
18 switch and there isn't a notice when a customer goes
19 back to the SSO, they should get a notice. I don't
20 know why they wouldn't get a notice that they are
21 going back to the SSO.

22 EXAMINER PRICE: Because it's a default
23 service and they are being returned involuntarily,
24 they would have the right to rescind.

25 Let's move on. I have one more set of

1 questions for you and that relates to your issues
2 regarding unbundling --

3 THE WITNESS: Sure.

4 EXAMINER PRICE: -- and the issues
5 regarding Supplier Consolidated Billing. We've been
6 doing competition now in Ohio in electric since 2001;
7 is that correct?

8 THE WITNESS: I don't know the exact
9 date, but it's around that time, yes.

10 EXAMINER PRICE: And we've been doing
11 competition gas, I want to say -- not the wild west,
12 before 2000, but we've been doing retail competition
13 in gas since the passing of House Bill 9 around 2003;
14 is that right?

15 THE WITNESS: Again, I don't know the
16 exact date, but I'll take your word on that.

17 EXAMINER PRICE: And throughout this time
18 there has been this allocating costs to the Standard
19 Service Offer or Standard Choice Offer; is that
20 correct?

21 THE WITNESS: I think there's been
22 questions of what costs should be allocated and to
23 whom. I think that's been an issue for -- for as
24 long as I've been around and probably longer.

25 EXAMINER PRICE: Couldn't the Commission

1 solve a lot of these problems as well as the issue of
 2 discount rates by simply having all providers bill
 3 for their services and only their services?
 4 Eliminate Supplier Consolidated Billing, eliminate
 5 Utility Consolidated Billing; simply IGS bills for
 6 its services, and the utility bills for its services?
 7 Wouldn't that simplify a lot of these allocation
 8 matters?

9 THE WITNESS: So you're just saying the
 10 utility bill for distribution and the --

11 EXAMINER PRICE: And transmission.

12 THE WITNESS: And transmission. No. I
 13 don't think that will simplify it because it would
 14 put us in a situation where only CRES providers would
 15 have to have a -- have -- CRES providers would get
 16 two bills, and the utility default service customers
 17 would get one bill because they would be the only
 18 entity that allowed -- that allowed the consolidated.

19 So if you are on the SSO, you would only
 20 get one bill from -- from the utility for commodity
 21 service and distribution service, but in order for a
 22 CRES provider to serve the customer, you would get
 23 two bills, you would necessarily get two bills for
 24 distribution service and commodity service and that
 25 would lead to a very bad customer experience where

1 customers, you know, are confused at which bill they
2 have to pay. They pay one bill, you know, and then
3 they -- and then they think they have already paid
4 their bill. And then they get another bill for gas
5 service or electric service.

6 We had that situation in California where
7 the utility required us to bill just our gas service
8 separate from the -- from the distribution service,
9 and it was a nightmare. It was just it wasn't a very
10 good customer experience at all for those who chose
11 to shop.

12 EXAMINER PRICE: So the existing
13 situation where there are still some questions in
14 your mind about whether costs are properly allocated
15 is preferable to a situation where you simply billed
16 for your own services, collected your costs for your
17 own services, and that's that.

18 THE WITNESS: Sure, yeah. I mean -- I
19 think there should be -- there should always be an
20 option for a consolidated bill. I think that's a
21 prerequisite for any kind of competitive market, but
22 if you really want to make a truly competitive
23 market, you have to have all products and services
24 being treated equally apples to apples including cost
25 allocation.

1 So it's a matter of degree, but I think
2 to make a -- to make a truly competitive and vibrant
3 market, you have to have all products and services
4 treated equally, and you cannot have a favored
5 product in the market like you currently have today
6 which is default service.

7 EXAMINER PRICE: Thank you. In a
8 previous hearing Mr. Olier suggested that IGS may
9 receive calls from customers of outages. Are you
10 aware of whether you get calls if the customer has an
11 outage from its utility service?

12 THE WITNESS: I mean, I believe, yes,
13 there are times when customers may call in and say,
14 you know, there's an outage.

15 EXAMINER PRICE: How many of those do you
16 get a year?

17 THE WITNESS: I don't know the exact
18 number.

19 EXAMINER PRICE: A lot? A few?

20 THE WITNESS: I don't know.

21 EXAMINER PRICE: You don't know.
22 Perfect. All right.

23 Mr. Pritchard?

24 MR. PRITCHARD: I have no questions, your
25 Honor.

1 EXAMINER PRICE: Mr. McNamee?

2 MR. McNAMEE: No questions, thank you.

3 EXAMINER PRICE: Redirect?

4 MR. OLIKER: Can we take a moment, your
5 Honor?

6 EXAMINER PRICE: You may.

7 (Discussion off the record.)

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

10 Redirect?

11 MR. OLIKER: Thank you, your Honor.

12 - - -

13 REDIRECT EXAMINATION

14 By Mr. Oliker:

15 Q. Mr. White, do you remember questions you
16 received regarding RESA members that participate in
17 Ohio?

18 A. Yes.

19 Q. And do you have any additional
20 information regarding how RESA makes decisions in
21 Ohio?

22 A. Yes. So, first, just want to clarify I
23 don't administer the website, and I am not frequently
24 reading the website, so I don't know why or how
25 those -- the -- or what the criteria was that RESA

1 listed, you know, Ohio members on the website.

2 What I do know though is that not every
3 member of RESA somehow has input in the
4 decision-making process of what RESA decides to do in
5 its litigation strategy. Effectively, you know, the
6 members that decide to participate in the litigation
7 are the ones that influence litigation strategy, so I
8 would not infer that just because you are a member of
9 RESA or even listed on the website as an Ohio member
10 of RESA, you're -- you're somehow making the decision
11 on whether or not RESA participates or takes
12 litigation positions.

13 Q. And do RESA pleadings usually provide
14 some type of explanation similar to what you just
15 mentioned?

16 A. Yes. We always have in a footnote these
17 are the -- these are the members. This is the
18 position. It is not necessarily the position of all
19 the members in the trade organization.

20 Q. Okay. And do you remember questions you
21 received from counsel from OCC regarding the
22 Reconciliation Rider?

23 A. Yes, I do.

24 Q. And do you have any additional
25 clarifications you would like to provide?

1 A. Sure. I just wanted to note that, you
2 know, whether or not the RR is made bypassable or
3 nonbypassable, if it's a bypassable charge, it would
4 represent approximately \$1.85 a month to SSO
5 customers which is more than -- which is less than,
6 significantly less than what customers are paying for
7 the DMR.

8 So to the extent that there is any issue
9 of rate shock or additional costs, the Commission
10 obviously wasn't as concerned about that because they
11 approved a much higher cost to the default service
12 customers by approving the DMR. And also even though
13 that there is -- there would be a cost to -- to the
14 default service customers, that would -- that
15 would -- that would be a revenue neutral change in
16 that shopping customers would not pay that cost.

17 Q. And --

18 EXAMINER PRICE: I have a question to
19 follow up. You had -- in response to Mr. Michael's
20 question about total customer shopping, you had
21 indicated it was your understanding about 50 percent.

22 THE WITNESS: Roughly. But don't quote
23 me on that because that's just a ballpark.

24 EXAMINER PRICE: What is the percentage
25 of shopping by load in Dayton Power and Light service

1 territory?

2 THE WITNESS: I am not 100 percent sure,
3 but I'm fairly certain that the commercial/industrial
4 obviously have more shopping than nonshopping
5 customers.

6 EXAMINER PRICE: Hence, the OVEC rider is
7 billed by kilowatt hours, not --

8 MR. OLIKER: Your Honor, you mean under
9 the proposed Stipulation or what's happening today?

10 EXAMINER PRICE: Today.

11 THE WITNESS: I don't know. I think that
12 may be true, but it doesn't necessarily have to be to
13 make it bypassable.

14 EXAMINER PRICE: That's not what I asked.
15 I just asked billed by the kilowatt-hours.

16 THE WITNESS: Again, I believe it is.

17 EXAMINER PRICE: So since it is billed by
18 the kilowatt-hours and since shopping is well over 50
19 percent by load, it would be a shift from all
20 customers, SSO customers, well in excess of 50
21 percent of the costs; is that right?

22 THE WITNESS: I'm sorry. Can you ask the
23 question again?

24 EXAMINER PRICE: We've established that
25 shopping by load is well over 50 percent of the load;

1 is that correct?

2 THE WITNESS: I believe -- I don't know,
3 but I think so, probably. I haven't looked at the
4 shopping.

5 EXAMINER PRICE: We have established OVEC
6 is billed by kilowatt-hours.

7 THE WITNESS: Yes.

8 EXAMINER PRICE: So most customers'
9 kilowatt-hours are shopping, and if we shift the OVEC
10 costs from non -- from all customers to only shopping
11 customers, it will be well over 50 percent of the
12 costs would be going over to nonshopping customers.

13 THE WITNESS: That's true but as I noted
14 that that -- we did the analysis and that only
15 represented the \$1.85 for the average customer per
16 month and, again, which was much less than what the
17 Commission approved for the DMR.

18 EXAMINER PRICE: We will strike
19 everything after "that's true."

20 Please proceed, Mr. Olikier. You can
21 follow up on that if you want.

22 Q. (By Mr. Olikier) To be clear though since
23 we had some questions on the Reconciliation Rider, if
24 the RR is bypassable, what is the projected charge
25 for a, you know, monthly charge for a residential

1 customer?

2 A. \$1.85.

3 Q. Okay. And do you remember questions you
4 received from DP&L -- counsel for DP&L regarding
5 whether there is a linkage from a credit rating
6 perspective about DPL and DP&L?

7 A. Yes.

8 Q. And can you explain the basis for why you
9 had indicated that you don't believe there is a
10 credit rating linkage between those two entities?

11 A. Sure. So based on my understanding of
12 what probably is the most analogous situation in the
13 closest time frame to when -- when, you know, DP&L --
14 this is occurring for DP&L, I reviewed what happened
15 in the Oncor bankruptcy which basically the parent
16 company of Oncor in around 2014 went bankrupt and
17 there -- there was proper ring fencing put in place
18 at -- by the Public Utilities Commission of Oncor to
19 ensure that the revenues that the distribution
20 utility earned -- maintained within the distribution
21 utility and when -- because of that ring fencing the
22 credit agencies, both Standard & Poor's and Moody's,
23 agreed that there was no need to downgrade the
24 distribution utility's debt, Oncor's -- Oncor's
25 credit rating.

1 And in this instance, in The Dayton Power
2 and Light instance, they have assured that -- the
3 Public Utilities of Ohio has -- has approved their --
4 the distribution -- utility's distribution rate case
5 and put ring fencing in place to ensure that the
6 distribution utility has the revenues it needs to
7 support its credit rating.

8 And in the event of a bankruptcy of its
9 parent company, I would largely believe that those
10 same credit agencies would not treat Dayton Power and
11 Light any differently than it treated Oncor,
12 especially considering that AES is a multibillion
13 dollar solvent company and in Oncor's situation the
14 parent company went bankrupt, but DP&L's situation
15 even though their -- their holding company may go
16 bankrupt, the parent holding company, AES, will still
17 be a very financially viable company.

18 MR. IRELAND: Your Honor, I would move to
19 strike the entirety of the answer. It is completely
20 irrelevant, and he already testified that he doesn't
21 follow the credit agencies, that he doesn't interact
22 with the credit agencies, and so now he is opining
23 basically on hearsay what he's read someplace as to
24 how the credit agencies treat these situations in
25 Texas.

1 MR. OLIKER: Your Honor, he was asked the
2 question do you believe there's a linkage between DPL
3 Inc. and DP&L on credit ratings.

4 EXAMINER PRICE: Which has nothing to do
5 with Texas. The motion to strike will be granted.
6 This is just part of your campaign to get the Oncor
7 documents in which you've been trying with every
8 witness and now you are trying to put something in
9 his redirect that properly would have been admissible
10 in his direct, but you did not include it in there.

11 MR. OLIKER: Your Honor, DP&L sites
12 Moody's throughout its direct testimony. They talk
13 about credit rating action throughout. They're
14 relying on the exact same information that we are
15 relying upon.

16 EXAMINER PRICE: Yes, and they put it in
17 their direct case. They did not try to bring it in
18 on redirect.

19 MR. OLIKER: And I would say he opened
20 the door on cross, your Honor. He's asking him
21 questions, and he's simply providing his answer.

22 EXAMINER PRICE: Asking him questions --
23 asking him questions limited to Dayton Power and
24 Light and DPL circumstances.

25 MR. OLIKER: Okay.

1 Q. (By Mr. Olikier) Mr. White, can you
2 explain in your view the reasons why Moody's and
3 Standard & Poor's would not see a linkage between DPL
4 Inc. and DP&L?

5 A. Sure.

6 Q. From a credit rating perspective --

7 MR. IRELAND: Objection. There is no
8 basis for this speculation and it's irrelevant.

9 MR. OLIKER: He asked the linkage between
10 DPL Inc. and DP&L.

11 EXAMINER PRICE: He can answer this
12 question as long as he stays within the parameters of
13 DP&L and DPL.

14 A. I believe that because the most recent
15 distribution rate case where Dayton Power and Light
16 came in, the Commission put in place proper ring
17 fencing to ensure that the revenue and cash flow of
18 the distribution utility remains within the
19 distribution utility in order to maintain proper
20 credit for the distribution utility. Because that
21 ring fencing is in place, it's irrelevant as to what
22 the financial situation of the intermediary company
23 between AES and DP&L -- their financial situation is
24 irrelevant to DPL Inc.'s -- I'm sorry, DP&L's credit
25 rating.

1 EXAMINER PRICE: You are saying the
2 Commission has implemented the proper ring fencing.

3 THE WITNESS: Yes, they did so in the
4 most recently approved distribution rate case.

5 Q. Mr. White, in your view does Moody's
6 always apply a notching effect to reduce the credit
7 rating of a subsidiary when there is distress of the
8 parent company?

9 MR. IRELAND: Objection.

10 EXAMINER PRICE: Grounds?

11 MR. IRELAND: Again, there's no
12 foundation for it. He has already testified he
13 doesn't interact with the credit agencies and he is
14 now being asked what Moody's would do.

15 EXAMINER PRICE: We'll allow it.

16 A. Can you repeat the question, please?

17 Q. I can just restate it. Mr. White, in
18 your view, does Moody's always apply a notching
19 effect to reduce the credit rating of a subsidiary
20 when there is distress of the parent company?

21 A. No.

22 Q. And what is the basis of that view, in
23 part?

24 A. When there is proper ring fencing in
25 place, there is no notching effect necessary.

1 Q. And do you remember questions you
2 received about DPL Inc. paying a dividend to its
3 parent AES?

4 A. Yes.

5 Q. Do you have any other clarifications on
6 those responses?

7 A. Sure. Even though the Stipulation that
8 was approved by the Commission prohibits a dividend
9 or any kind of cash flow from the DMR flowing up to
10 AES, to me that -- that's -- that really doesn't mean
11 that much because by paying down the debt for the
12 Company that AES owns, that's directly benefiting the
13 parent company because it enables the parent company
14 to retain the value of that asset.

15 So regardless of whether the money is
16 flowing directly up to AES or regardless of whether
17 they're just using the money to pay down the debt of
18 that company, that's a direct financial benefit to
19 AES, and it would just be like, hey, an analogy would
20 be similar to me offering to pay off your loans and
21 not giving you the cash directly. You are still
22 receiving a financial benefit when someone pays down
23 your debt for you.

24 EXAMINER PRICE: So does that also apply
25 then the other way on the tax sharing payments?

1 Since AES is paying the taxes on behalf of DPL, DPL
2 is receiving a benefit from AES in terms of those
3 tax-sharing payments?

4 THE WITNESS: Yes. Well, first of all --

5 EXAMINER PRICE: Yes is fine.

6 THE WITNESS: Yes.

7 Q. (By Mr. Olikar) Mr. White, do you know if
8 AES has actually forgone any taxes?

9 A. I don't know but because the fact that
10 DPL Inc. is not profitable and most of their money is
11 going to pay off debt, I would imagine they are not
12 paying any taxes anyway.

13 MR. OLIKER: Those are all the questions
14 I have, your Honor. Thank you.

15 EXAMINER PRICE: Company?

16 MR. IRELAND: Nothing further, your
17 Honor.

18 EXAMINER PRICE: Mr. Boehm?

19 MR. BOEHM: No questions, your Honor.

20 EXAMINER PRICE: City?

21 MR. ALEXANDER: No, thank you, your
22 Honor.

23 EXAMINER PRICE: OMAEG?

24 MR. DRESSEL: No questions.

25

1 EXAMINER PRICE: Kroger?

2 MS. WHITFIELD: No questions, your Honor.

3 EXAMINER PRICE: OCC?

4 MR. MICHAEL: None.

5 EXAMINER PRICE: IEU Ohio?

6 MR. PRITCHARD: No questions.

7 EXAMINER PRICE: RESA?

8 MS. PETRUCCI: No questions, your Honor.

9

10 EXAMINER PRICE: Mr. McNamee?

11 MR. McNAMEE: It's a sweep. No

12 questions.

13 EXAMINER PRICE: Ms. Schabo?

14 EXAMINER SCHABO: No questions.

15 EXAMINER PRICE: I have no further

16 questions. You are excused.

17 MR. OLIKER: Your Honor, IGS would move

18 for the admission of Exhibit 1014.

19 EXAMINER PRICE: Any objection to the

20 admission of Exhibit 1014?

21 Seeing none, it will be admitted.

22 (EXHIBIT ADMITTED INTO EVIDENCE.)

23 MR. IRELAND: We will move the admission

24 of DP&L Exhibit 1001.

25 EXAMINER PRICE: Any objections?

1 MS. PETRUCCI: Your Honor, we object. We
2 don't think there was a proper foundation laid for
3 this exhibit. Mr. White made it very clear he wasn't
4 familiar with the information on the website, and he
5 hasn't reviewed it prior to testifying.

6 EXAMINER PRICE: I am going to overrule
7 your objection. If you had that objection, you
8 should have raised it during the questions he was
9 asking to allow Mr. Ireland an opportunity to lay a
10 proper foundation rather than waiting now until he
11 hasn't an opportunity to cure. Overruled.

12 (EXHIBIT ADMITTED INTO EVIDENCE.)

13 MR. OLIKER: Your Honor, I would also
14 raise the objection I don't know what the probative
15 value is given the clarifications that Mr. White made
16 regarding what the exhibit states and what happens in
17 reality, but given that the record reflects that
18 clarification, it's somewhat mitigated, but I just
19 don't think it has probative value.

20 EXAMINER PRICE: The Commission will give
21 it its due weight.

22 EXAMINER SCHABO: I believe the plan is
23 to go back to Mr. McNamee for his next witness.

24 MR. McNAMEE: Mr. Nicodemus.

25 (Witness sworn.)

1 EXAMINER SCHABO: Please have a seat.

2 Mr. McNamee.

3 MR. McNAMEE: No. Oh, I have no
4 questions.

5 EXAMINER SCHABO: Mr. Olier.

6 - - -

7 JACOB J. NICODEMUS

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

10 CROSS-EXAMINATION

11 By Mr. Olier:

12 Q. Good morning, Mr. Nicodemus.

13 A. Good morning.

14 Q. I will try to keep this relatively brief.
15 You are familiar with the Commission's CAIDI and
16 SAIFI standards, correct?

17 A. Correct.

18 Q. And can you explain what those standards
19 relate to in laymen's terms?

20 A. Electric reliability. CAIDI is a measure
21 of restoration time. SAIFI is a measure of
22 interruptions.

23 Q. And the Commission has specific rules
24 related to these standards, correct?

25 A. Yes.

1 Q. And it monitors whether or not the
2 utilities -- or electric distribution utilities are
3 meeting the standards, correct?

4 A. Yes.

5 Q. And if the utility doesn't meet those
6 standards, the Commission actually has the ability to
7 fine the utility, does it not?

8 A. Not meeting one of those standards for
9 two consecutive years is a rule violation.

10 Q. And it actually could be \$10,000 a day,
11 correct?

12 A. I don't know that.

13 Q. But if they don't meet either of the
14 standards, then they could be fined for violating
15 each one of those standards, correct?

16 A. Could you repeat that, please?

17 Q. I think -- let's take a step back. Could
18 you unpack your answer a little bit? If they don't
19 meet one of the standards for two consecutive years,
20 that could result in fines, correct?

21 A. If they don't meet, say, the CAIDI
22 standard for two consecutive years, that is a rule
23 violation.

24 Q. And if they don't meet -- you said the
25 CAIDI I think?

1 A. Yes.

2 Q. What if they don't meet the CAIDI and
3 SAIFI standards? Does each one create an independent
4 violation potentially?

5 A. If they don't meet them for two years in
6 a row. If they meet both standards in one year, I
7 don't believe that's a violation.

8 Q. Okay. But if they meet the CAIDI
9 standard and SAIFI standard for two years in a row,
10 they could be independently fined for each of those
11 violations, correct?

12 A. Oh, I don't know that.

13 Q. Okay. But if we looked in the Commission
14 rules, we would know, right?

15 A. I don't know if the rules speak to
16 missing both the standards for two years in a row. I
17 know it speaks to missing one of the standards for
18 two years in a row.

19 Q. Okay.

20 A. I don't know if it's that specific.

21 Q. And you are not an attorney, I don't
22 believe.

23 A. I am not.

24 Q. Okay. You're lucky. Okay. In your
25 testimony it speaks regarding the Distribution

1 Investment Rider, correct?

2 A. No. My testimony addresses electric
3 reliability.

4 Q. And on page 2, does it not say on line
5 8 -- mention the Distribution Investment Rider?

6 A. Are you looking at my testimony?

7 Q. Yes.

8 A. Where are you looking again?

9 Q. Page 2, line 8, does it mention the
10 Distribution Investment Rider?

11 A. It does but I am not involved with the
12 development or review of any riders or rates.

13 MR. OLIKER: Thank you, Mr. Nicodemus. I
14 believe those are all the questions I have.

15 EXAMINER SCHABO: Mr. Alexander?

16 MR. ALEXANDER: No, thank you, your
17 Honor.

18 EXAMINER SCHABO: Sorry. Redirect first.

19 MR. McNAMEE: No redirect, your Honor.

20 EXAMINER SCHABO: Mr. Alexander?

21 MR. ALEXANDER: No, thank you.

22 EXAMINER SCHABO: OMAEG?

23 MR. DRESSEL: No questions.

24 EXAMINER SCHABO: Kroger?

25 MS. WHITFIELD: No questions.

1 EXAMINER SCHABO: IEU Ohio?

2 MR. PRITCHARD: No questions, your Honor.

3 EXAMINER SCHABO: RESA?

4 MS. PETRUCCI: No questions.

5 EXAMINER SCHABO: All right. Thank you.

6 You may step down.

7 EXAMINER PRICE: Mr. Olikier? I'm sorry.

8 MR. OLIKER: Can we have a quick health
9 break? I tried to -- can we go off the record?

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

11 (Recess taken.)

12 EXAMINER SCHABO: Let's go back on the
13 record.

14 MR. OLIKER: Thank you, your Honor. IGS
15 would call J. Edward Hess to the stand.

16 (Witness sworn.)

17 EXAMINER SCHABO: Thank you. Have a
18 seat. State your name and identify your business
19 address for the record, please.

20 THE WITNESS: As I stated before, I don't
21 really have a business address. I work out of my
22 home, and I prefer not to put that on the record.

23 EXAMINER SCHABO: That is fair.

24 MR. OLIKER: Thank you, your Honor.

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J. EDWARD HESS

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

DIRECT EXAMINATION

By Mr. Olikar:

Q. Mr. Hess, have you presented direct
testimony in this case?

A. Yes.

Q. And is that testimony before you?

A. Yes.

MR. OLIVER: Your Honor, I would like to
mark the direct testimony of J. Edward Hess as IGS
Exhibit 1015.

EXAMINER SCHABO: So marked.

(EXHIBIT MARKED FOR IDENTIFICATION.)

Q. (By Mr. Olikar) And, Mr. Hess, was that
testimony filed on February 12, 2019, originally?

A. That's the date I have, yes.

Q. And there is both a confidential and a
public version of your testimony, correct?

A. That's correct.

MR. OLIVER: Your Honor, I would like to
mark the confidential version. Do we want to do
1016C, or do you want to do 1015C?

EXAMINER SCHABO: Let's do 1016C.

1 MR. OLIKER: Okay. Thank you.

2 (EXHIBIT MARKED FOR IDENTIFICATION.)

3 Q. And both of those testimonies were
4 prepared by you or under your direction, correct?

5 A. Yes, sir.

6 Q. And, Mr. Hess, do you have any changes to
7 that testimony?

8 A. I do. I have two.

9 Q. Okay. Could you walk us through those
10 changes?

11 A. Yes, sir. On page 10, line 10, reads
12 "What was the financial impact of the AEP." It
13 should be "AES acquisition."

14 Q. And did you indicate that should reflect
15 "AES" instead of "AEP"?

16 A. It should reflect AES, yes, that's
17 correct.

18 Q. And for your next correction, could you
19 just identify the line and page number that's on
20 rather than reading it.

21 A. Sure. Page 26, line 3, it's the ninth
22 word. Should read "assets," A-S-S-E-T-S.

23 Q. Thank you for that clarification,
24 Mr. Hess.

25 A. Yeah. I apologize if that offended

1 anybody. It was an oversight.

2 Q. And with those corrections, would your
3 responses be the same today if you were asked these
4 same questions?

5 A. Yes.

6 MR. OLIKER: Okay. With that, your
7 Honor, IGS would move for the admission of both
8 exhibits and tender the witness for
9 cross-examination.

10 EXAMINER SCHABO: Thank you.

11 Mr. Sharkey?

12 MR. SHARKEY: Yes, your Honor. I would
13 actually like to start with a motion to strike
14 portions of Mr. Hess's testimony. It would start,
15 your Honor, on page 14, line 17, and extend through
16 page 16, line 4. So it's two questions and two
17 answers that I'm moving to strike.

18 EXAMINER SCHABO: Okay.

19 MR. SHARKEY: And the grounds, your
20 Honor, is these questions and answers deal with AES's
21 acquisition of sPower. And the Attorney Examiners
22 ruled yesterday that, you know, questions relating to
23 AES's acquisition of sPower were irrelevant and I
24 believe appropriately so seeing as specifically, your
25 Honor, DPL Inc. has not been providing any cash

1 payments to AES. And Mr. Hess, in fact, in his
2 testimony, portions of testimony I am moving to
3 strike, page 15, line 11 states that the acquisition
4 of sPower was funded primarily by cash and equity,
5 not debt.

6 So the mere fact that the acquisition of
7 sPower happened close in time to when the Amended
8 Stipulation was approved, I think it's sufficient to
9 show there isn't any linkage. So we move to strike
10 consistent with the Attorney Examiners' prior ruling
11 sPower acquisition was irrelevant.

12 EXAMINER SCHABO: Thank you.

13 Mr. Oliker?

14 MR. OLKER: Your Honor, if I may
15 respond? A few points. First, if we're going to
16 what was said yesterday, I thought that the ruling
17 was that the questioning was outside of the scope of
18 the witness's testimony.

19 EXAMINER PRICE: I think that's correct.

20 MR. OLKER: And which is different from
21 what we may include in our direct testimony. And I
22 think there's also evidence that came into the record
23 earlier today. Matt White specifically answered
24 questions on regardless that no cash is moving
25 between DPL Inc. and AES, that's got a benefit for

AES, and he also stated that in the absence of this stipulation, that puts AES in the difficult situation of having to decide do I give equity to DPL Inc. or do I let it go to bankruptcy. And as a result of the consequences of that decision, that does have an impact on AES's cash flows. And as a result of that, Mr. Hess is fully entitled to identify and the record should reflect that this may have anticompetitive impacts on both Ohio and in other states.

For example, as he identifies in the testimony, sPower is doing business in Ohio. It's building projects in Ohio. It's doing projects elsewhere and competing against IGS, so I think it's perfectly relevant and Mr. Sharkey is entitled to cross-examine him on it and the Commission will give it its due weight.

EXAMINER SCHABO: Response, Mr. Sharkey?

MR. SHARKEY: I have nothing to add from my original argument, your Honors.

EXAMINER SCHABO: I am going to grant the motion to strike.

Do you have any further motions to strike, Mr. Sharkey?

MR. SHARKEY: That's the only one, your Honor.

1 EXAMINER SCHABO: Okay.

2 THE WITNESS: Your Honor, I'm sorry. I
3 didn't hear. Did you grant the motion?

4 EXAMINER SCHABO: I did grant the motion
5 to strike so from --

6 THE WITNESS: Line 17, page 14, through?

7 EXAMINER SCHABO: Line -- page 16, line
8 4, and the footnote I'm assuming?

9 MR. SHARKEY: Yes, your Honor, the
10 footnotes would be included within those sections,
11 yes.

12 THE WITNESS: 16, line 14, so all of 15,
13 16, line 4, and any associated footnote.

14 EXAMINER SCHABO: Yes, sir.

15 THE WITNESS: Thank you.

16 MR. OLIKER: Your Honor, so I understand
17 the basis, or just so the record is clear, what we're
18 addressing with our proffer and for purposes of
19 briefing?

20 EXAMINER SCHABO: I do not see the
21 relevance of the application -- or the -- yeah.

22 MR. OLIKER: Thank you.

23 MR. SHARKEY: Thank you, your Honor.

24 - - -

25

CROSS-EXAMINATION

By Mr. Sharkey:

Q. Mr. Hess, as you know, my name is Jeff Sharkey, and I represent The Dayton Power and Light Company. Your testimony does not address whether the stipulation was the result of serious bargaining among knowledgeable parties, correct?

A. That's correct.

Q. Okay. And you understand that one of the criteria for evaluating a stipulation is that as a package, it benefits customers in the public interest, correct?

A. Yes, sir. I believe I have those listed on page 6 of my testimony.

Q. Okay. Do you have a copy of the Amended Stipulation available to you, Mr. Hess?

A. I do not.

MR. SHARKEY: Your Honor, may I approach?

EXAMINER SCHABO: You may.

A. Thank you.

Q. Now, I've provided to you a copy of the Amended Stipulation, Mr. Hess. Would you please turn to page 3.

A. I have that.

Q. Subparagraph little b discusses

1 contractually required tax-sharing payments to AES
2 Corporation in the second line. Do you see that?

3 A. Yes, first two lines.

4 Q. Okay. And you don't know what contract
5 that paragraph is referring to, do you?

6 A. No, sir, I don't.

7 Q. Turn then to page 9.

8 EXAMINER SCHABO: Of the stipulation?

9 MR. SHARKEY: Yes, of the stipulation,
10 your Honor.

11 A. Yes, sir, I have that.

12 Q. There's a section there titled "Economic
13 Development Rider"? Roman Numeral IV, correct?

14 A. Roman Numeral IV, that's correct.

15 Q. And you have no opinion as to whether the
16 Economic Development Rider provides benefits to the
17 public and to customers, correct?

18 A. I'm sorry. Could I have the question
19 read? Did you say I have no opinion --

20 Q. Correct.

21 A. -- as to that? That's correct.

22 Q. Turn to page 14 of the Amended
23 Stipulation, please.

24 A. Sure. I have that.

25 Q. The Decoupling Rider, it's true, isn't

1 it, you don't understand what it is and have no
2 opinion on whether it benefits customers?

3 A. That's right.

4 Q. Staying on page 14, the Transmission Cost
5 Recovery Rider-Nonbypassable which then extends a
6 couple of pages --

7 A. Mr. Sharkey, could you slow down just a
8 little bit for me, please.

9 Q. Sure.

10 A. I am getting a little older and things
11 have slowed down for me.

12 Q. Sticking with page 14, there's the
13 Transmission Cost Recovery Rider-Nonbypassable. Do
14 you see that?

15 A. Yes.

16 Q. Okay. And it's also true that you don't
17 understand that provision and have no opinion as to
18 whether it benefits customers in the public interest,
19 right?

20 A. I believe that's how I responded in the
21 deposition, that's correct.

22 Q. Turn then, if you would, to page 20.
23 There's a section Roman Numeral VII titled
24 "Cogeneration." Do you see that?

25 A. Yes.

1 Q. And you don't know what that is, right?

2 A. That's correct.

3 Q. Turn to the next page, page 21. At the
4 top there is a reference to DP&L withdrawing its
5 request for a Clean Energy Rider. Do you see that?

6 A. Yes, sir, I see that.

7 Q. You don't know what that is and have no
8 opinion on whether that withdrawal benefits customers
9 or the public interest, correct?

10 MR. OLIKER: Objection.

11 EXAMINER SCHABO: Basis?

12 MR. OLIKER: There's no foundation
13 regarding the Clean Energy Rider at all, whether it
14 even existed in the first place to establish there
15 could be a benefit from withdrawing it.

16 EXAMINER SCHABO: I'm sorry. I don't
17 understand your grounds.

18 MR. OLIKER: I think the question -- the
19 question is vague and there's no foundation regarding
20 the rider, and it's misleading to the record.

21 EXAMINER PRICE: The application included
22 the Clean Energy Rider, did it not?

23 MR. OLIKER: It did at one point in time
24 but there was no Clean Energy Rider before that.
25 I'll withdraw the objection, but I believe it's --

1 the question is very ambiguous and vague.

2 Q. Would you like to hear the question
3 again?

4 A. Please.

5 Q. It's true, isn't it, you don't know what
6 the Clean Energy Rider, or DP&L's request for one,
7 was and have no opinion as to whether that provision
8 benefits customers and the public interest?

9 A. That's correct. I believe that's how I
10 testified at the deposition.

11 Q. Yes, you did. I just have to ask the
12 questions again here.

13 EXAMINER PRICE: He will let you know
14 when you didn't testify that way in the deposition.

15 THE WITNESS: All the pages we skipped.

16 Q. Still on page 21, Roman Numeral IX,
17 paragraph 1, discusses non-commodity billing. Do you
18 see that?

19 A. Roman numeral IX, paragraph 1,
20 non-commodity billing, I see that.

21 Q. And you don't know what non-commodity
22 billing is and have no opinion whether that paragraph
23 benefits the public interest, correct?

24 A. That's correct.

25 Q. Then still sticking on page 21, at the

1 bottom there is a Roman Numeral IX, subparagraph 2,
2 discusses Supplier Consolidated Billing that goes on
3 for a number of pages. My question to you is it's
4 true, isn't it, you don't know what that is and have
5 no opinion as to whether that benefits the public
6 interest.

7 A. Yeah. I am -- I generally understand
8 what consolidated billing -- consolidated billing is.
9 I don't know the program that was implemented here,
10 and I don't know whether or not it benefits the
11 public interest.

12 Q. Okay. Do you recall at your deposition
13 that I went through the Stipulation nearly paragraph
14 by paragraph asking you whether they benefited the
15 public interest?

16 MR. OLKER: Objection.

17 EXAMINER SCHABO: Grounds?

18 MR. OLKER: What he did at his
19 deposition, it's irrelevant. I mean, it's asking you
20 about what he said somewhere else, and I don't see
21 how that's relevant to this. If he wants to ask him
22 questions and then he departs from what he said in
23 his deposition, then the deposition might be
24 relevant, but it's really just --

25 EXAMINER SCHABO: Mr. Sharkey, why don't

1 you come at it from a different angle.

2 MR. SHARKEY: Okay.

3 Q. (By Mr. Sharkey) Is it true that the only
4 paragraph you've identified in the stipulation that
5 you believe benefits the public interest and
6 customers was the Economic Development Rider on pages
7 9 through 10 of the Amended Stipulation?

8 A. Mr. Sharkey, I don't remember that kind
9 of detail from the deposition.

10 Q. I am not asking you about your
11 deposition. It was ruled that I couldn't. But what
12 I am specifically asking you is if you take a look at
13 page 9 to 10 of the Amended Stipulation.

14 A. I have that, yes.

15 Q. Included in the Economic Development
16 Rider?

17 MR. OLIKER: Objection. I am not trying
18 to be obstructive, but are we talking about the
19 Stipulation as written or as approved?

20 EXAMINER SCHABO: Would you like to
21 clarify?

22 MR. SHARKEY: I am talking about it as
23 written for the moment, your Honor.

24 EXAMINER SCHABO: Thank you.

25 MR. SHARKEY: Actually let's just strike

1 the question and move on, your Honor.

2 EXAMINER SCHABO: Okay.

3 Q. (By Mr. Sharkey) Let me ask you a
4 question about -- some questions about your DMR
5 testimony. You don't know whether IGS is a DP&L
6 customer, correct?

7 A. Are we done with this, Mr. Sharkey?

8 Q. For now, yes.

9 A. Okay. I do not know whether IGS is a
10 DP&L customer, that is correct.

11 Q. You thus don't know whether or not IGS
12 pays the DMR, correct?

13 A. I do not know whether IGS pays the DMR,
14 that is correct.

15 Q. To your knowledge, IGS is not a
16 competitor of The Dayton Power and Light Company,
17 correct?

18 A. Thinking through that, Mr. Sharkey, IGS
19 does provide a competitive electric supply service,
20 and DP&L provides a Standard Service Offer. So given
21 that I guess they could be described as competitors.
22 Just trying to state the facts, so I don't know
23 whether that would be a competitor or -- or just
24 providing the same service.

25 MR. SHARKEY: Just a moment, your Honor.

1 Your Honor, may I approach?

2 EXAMINER SCHABO: You may.

3 Q. Mr. Hess, I've handed you a copy of your
4 aforementioned deposition. I would ask you to turn
5 to page 8. Tell me when you're there.

6 A. I will. Yes, sir, I'm there.

7 Q. Line 23 I asked you the question "To your
8 knowledge, is IGS a competitor of The Dayton Power
9 and Light Company?"

10 And then after some clarifications,
11 starting on page 9, line 6, you said "I don't believe
12 that IGS provides distribution service, so I don't --
13 so I can't see how they would be a competitor of
14 DP&L." Did I read that correctly, sir?

15 A. Yes, sir. That's correct.

16 MR. OLIKER: Your Honor, object. There
17 was no impeachment. The answer identifies that we
18 don't compete for distribution service, and the
19 answer that Mr. Hess provided indicated that there
20 may be services such as SSO services which are
21 different, so I think the answer is consistent. It
22 just may be from a slightly different angle.

23 EXAMINER SCHABO: Overruled.

24 Q. And it's true, is it --

25 A. Can I point out something too,

1 Mr. Sharkey?

2 Q. Sorry. I believe your counsel can ask
3 you questions.

4 A. Okay.

5 Q. It's true -- it's true, isn't it, also
6 you don't know whether IGS is a competitor of any DPL
7 Inc. subsidiary?

8 A. No, I don't know that. Yes, that's
9 correct.

10 Q. You do agree that it's important that
11 Dayton Power and Light Company provide safe and
12 reliable service, right?

13 A. Yes.

14 Q. And you also agree it's in the public
15 interest that The Dayton Power and Light Company be
16 investment grade, right?

17 A. Yes.

18 Q. Okay. You don't know what the rate
19 stabilization charge was, do you?

20 A. I believe in the deposition, Mr. Sharkey,
21 you asked me that question, and I said I did know
22 what it was. I hadn't reviewed it in years. I was
23 probably responsible for having created it, but off
24 the top of my head at that point in time, I didn't
25 know what it was. Do I know what it is? If given

1 some time to research it and go back and look at it,
2 yes, I could tell you exactly what it was but off the
3 top of my head right now, no.

4 Q. You also don't know whether The Dayton
5 Power and Light Company was collecting a bypassable
6 charge immediately before the Commission approved the
7 Amended Stipulation, correct?

8 MR. OLIKER: Objection.

9 EXAMINER SCHABO: Grounds?

10 MR. OLIKER: I think -- could I have the
11 question read back.

12 (Record read.)

13 Q. (By Mr. Sharkey) Let me withdraw the
14 question and correct it. It's true, isn't it, that
15 you don't know whether or not The Dayton Power and
16 Light Company was collecting a nonbypassable charge
17 before the Amended Stipulation in this case was
18 approved by the Commission, correct?

19 A. I do not know that, yes.

20 Q. You don't know what DP&L's credit rating
21 was immediately before the Stipulation was signed,
22 correct?

23 A. Mr. Sharkey, no. I may have seen it at
24 some point in time, but off the top of my head I
25 can't tell you what it was.

1 Q. Okay. You are not aware of any instances
2 in the state of Ohio that a public utility has issued
3 debt in the junk market, right?

4 MR. OLIKER: Could I have that question
5 read back, again.

6 EXAMINER SCHABO: Please.

7 (Record read.)

8 A. Not off the top of my head, no, sir.

9 Q. You don't know at the time of the Amended
10 Stipulation was signed whether any of DP&L's debt
11 instruments restricted the amount of debt that The
12 Dayton Power and Light Company could take on into the
13 future.

14 THE WITNESS: Can I have the question
15 reread, please.

16 (Record read.)

17 A. Mr. Sharkey, I think as we discussed in
18 the deposition, Mr. Olikier had provided me and I
19 couldn't remember the name of it during the
20 deposition but it's a credit agreement dated August
21 24, 2016, with JPMorgan Chase, several hundred page
22 document. And I believe there are restrictions in
23 that document but there are also it's called negative
24 covenants, indebtedness, and they do have exceptions
25 to them.

1 I told Mr. Olikier he probably should
2 cross the Company's witness on that document.

3 Q. And he did. You don't know whether there
4 is a linkage between DP&L's debt and -- strike that
5 question.

6 You don't know what the linkage is
7 between DP&L's credit rating and DPL Inc.'s credit
8 rating, do you?

9 A. If the company had implemented the proper
10 ring fencing procedures it claims that it did and if
11 the Commission had implemented those procedures, then
12 there would not be much of an impact.

13 Q. Turn, if you would, to page 66 of your
14 deposition.

15 A. 66 of?

16 Q. Your deposition transcript.

17 A. Sir, I have that.

18 Q. Starting on line 6, I asked you the
19 question "Do you know whether there is any linkage in
20 the credit ratings between The Dayton Power and Light
21 Company and DPL Inc.?"

22 And then starting on line -- then you say
23 "I think Malinak -- is that how he pronounces it?"

24 And I said "Yes."

25 And then you said "I believe he makes

1 that statement. Firsthand do I know or believe that
2 there's a linkage, no, I don't know the answer to
3 that question." Did I read that correctly, sir?

4 A. Yes, sir, you did.

5 Q. It's true, isn't it, you have not studied
6 what DP&L -- strike that.

7 You don't know what DPL Inc. does with
8 its money, do you?

9 A. No, sir.

10 Q. You reviewed Jeff Malinak's testimony in
11 this case and are not critical of his projections,
12 right?

13 A. I have no testimony that objects to
14 anything he's done with his projections, that's
15 correct. Mr. Sharkey, however, and I believe I even
16 mentioned this in the deposition, other than the fact
17 that I do provide a calculation --

18 MR. OLKER: Let me interject if that
19 calculation is confidential, be aware of that,
20 Mr. Hess.

21 THE WITNESS: Yes, sir, I believe it is.

22 MR. OLKER: But I don't mean to cut off
23 your answer if you were still explaining what the
24 calculation was.

25 A. So consistent with the deposition, I do

1 believe I referred to the table on page 24 of my
2 testimony. I stated, I believe, Mr. Malinak said
3 there were not enough funds provided to fund future
4 investments, and as I stated I think in my
5 deposition, I take issue with that, with this
6 schedule.

7 Q. You don't recall reading Craig Jackson's
8 testimony, do you?

9 A. That's correct.

10 Q. Okay. You don't know whether the
11 transfer of DP&L's former generation assets to an
12 affiliate had a credit positive effect on The Dayton
13 Power and Light Company, do you?

14 A. I don't know the answer to that.

15 Q. Okay. And you also don't know whether
16 the sale of those generation assets by a DP&L
17 affiliate had a credit positive effect on DPL Inc.,
18 do you?

19 A. I don't know the answer to that.

20 Q. Your testimony does not address whether
21 The Dayton Power and Light Company would have
22 sufficient borrowing capacity to pursue SmartGrid
23 without the DMR, right?

24 MR. OLKER: Objection. The question --
25 the question is vague because I don't understand it.

1 The witness might.

2 EXAMINER SCHABO: Could you read the
3 question back, please.

4 (Record read.)

5 EXAMINER SCHABO: The objection is
6 overruled.

7 A. I don't believe my testimony addresses
8 that.

9 Q. You don't know whether IGS has supported
10 SmartGrid or not, do you?

11 A. I don't know the answer to that, no.

12 Q. You do believe that the DMR would be an
13 incentive for The Dayton Power and Light Company to
14 pursue SmartGrid, right?

15 MR. OLIKER: Objection. The question is
16 vague. If he understands the question, go ahead.

17 EXAMINER SCHABO: Please answer the
18 question as you understand it.

19 THE WITNESS: Could you repeat the
20 question, please.

21 (Record read.)

22 A. Mr. Sharkey, I am trying to remember back
23 what I said in my deposition. I believe what I said
24 was that the incentive to pursue SmartGrid would be a
25 return on equity that's authorized in the SmartGrid

1 calculation. The DMR is used as another function for
2 other purposes.

3 Q. Are you telling me that the DMR is not an
4 incentive for The Dayton Power and Light Company to
5 pursue SmartGrid?

6 A. I will repeat my answer, Mr. Sharkey.
7 The DMR, the return on equity that's provided for the
8 SmartGrid would be the incentive to build the
9 SmartGrid. The DMR is simply a payment to help or to
10 fund company debt.

11 MR. SHARKEY: Your Honor, could I hear
12 that answer back again? I am not sure if it was
13 responsive to my question or not.

14 EXAMINER SCHABO: Karen, could you reread
15 the answer.

16 (Record read.)

17 Q. Turning to page 72 of your deposition,
18 Mr. Hess. Are you there?

19 A. I am there.

20 Q. Line 7, I asked you the question "Do you
21 believe that the DMR would provide incentive to The
22 Dayton Power and Light Company to implement smart
23 grid?"

24 And then after your counsel objects, you
25 said "Well, of course," you characterize it as

1 "getting free money" but then you said "that you
2 might invest into something would be an incentive to
3 invest in something." Did I read that accurately?

4 MR. OLIKER: Objection. He did not read
5 all of the response, your Honor, and I think that we
6 should be reading all of his response into the record
7 rather than just a portion of it. The impeachment is
8 incorrect.

9 MR. SHARKEY: I believe his attorney can
10 ask him that if he likes to go back and do it. I
11 don't think I am obligated to read all of the answer.
12 It pretty much strays off subject.

13 MR. OLIKER: Your Honor, I do believe
14 that has been the practice, if you go outside of the
15 question to a separate answer, then maybe it is
16 something else, but at least if we are going to try
17 to impeach people, we should be doing it based upon
18 the entire transcript and the entire response.

19 EXAMINER SCHABO: Give me a second to
20 read it, please.

21 MR. OLIKER: Thank you, your Honor.

22 EXAMINER SCHABO: It's fine this time.
23 In the future if we are going to use the deposition
24 to impeach, go ahead and read the whole thing into
25 the record. All right?

1 MR. SHARKEY: Okay. Thank you, your
2 Honor.

3 Q. (By Mr. Sharkey) Mr. Hess, it's true,
4 isn't it, costs for product or services can be set
5 using cost-based mechanisms or market-based
6 mechanisms?

7 A. I'm sorry. I didn't hear the first part
8 of that question.

9 EXAMINER SCHABO: Please reread the
10 question.

11 (Record read.)

12 A. Costs for products or services?

13 Q. Fair enough.

14 A. No, I don't understand the question.

15 Q. Fair enough. Poor question. Prices for
16 products or services can be set using cost-based
17 mechanisms or market-based mechanisms.

18 A. Yes.

19 Q. Let me ask you some questions about the
20 Reconciliation Rider and OVEC. You are not aware of
21 any action that DP&L has taken as to OVEC that was
22 imprudent, correct?

23 A. That's correct.

24 Q. You do not know whether OVEC generation
25 was used to supply DP&L's customers, right?

1 MR. OLIKER: Objection. Is there a time
2 frame?

3 MR. SHARKEY: There is no time frame. At
4 any time.

5 EXAMINER SCHABO: Answer the question,
6 please. Overruled.

7 A. Yeah. I don't know the answer to that.

8 Q. You don't know whether DP&L can divest
9 itself of its OVEC interest, do you?

10 MR. OLIKER: Objection. Calls for a
11 legal conclusion but if he can answer as a regulatory
12 expert, I will withdraw the objection.

13 EXAMINER SCHABO: Well done. Ruling on
14 your own objections.

15 MR. OLIKER: So I will withdraw it.

16 EXAMINER SCHABO: Mr. Hess, please answer
17 the question.

18 A. I don't know, that's correct.

19 Q. And you don't know whether DP&L has made
20 efforts to divest itself of its OVEC interest, do
21 you?

22 A. I don't know that.

23 Q. You can't give me a specific example of
24 what hedge is, can you?

25 A. I believe as we discussed in the

1 deposition, it's a financial tool to levelize risk in
2 the future. Now, you asked me for an example, and at
3 that point in time I couldn't come up with one. I
4 can't necessarily come up with one right now.

5 Q. You don't know whether generation markets
6 are volatile, do you?

7 A. No. I believe what I said in the
8 deposition I don't study them. I understand that
9 they are volatile. They follow weather, and weather
10 is volatile.

11 Q. Transition costs in Ohio were calculated
12 as the difference between the book value of
13 generation plants owned by the utility in Ohio as
14 compared to the market value of those same generation
15 plants, right?

16 A. Not completely, no.

17 Q. And what aspect was my answer
18 incorrect -- or my question incorrect? Sorry.

19 A. In addition to that regulatory assets
20 were accounted for as transition costs and that was
21 just a date certain value of the regulatory asset.

22 Q. With that clarification you would agree
23 with my statement?

24 A. Generally, yes.

25 Q. You're aware that the Commission made the

1 Reconciliation Rider nonbypassable, in other words,
2 it modified the Stipulation?

3 A. That's correct, yes.

4 Q. Okay. You don't know why the Commission
5 concluded that the reconciliation rider should be
6 recovered on a nonbypassable basis, correct?

7 A. I've read the order on that. I believe
8 part of it was to be consistent with what it's done
9 with other companies.

10 Q. You're not aware of any specific facts
11 that IGS was injured as a result of the
12 Reconciliation Rider being made nonbypassable,
13 correct?

14 A. Well, Mr. Sharkey, I am sure it impacted
15 the sales levels. A larger avoidable charge would
16 have increased their ability to retain people off the
17 Standard Service Offer, and in my deposition I may
18 not have responded that way but that's factually
19 correct.

20 Q. You're right, you didn't respond that
21 way. Turn to page 33, if you would, please, of your
22 deposition.

23 MR. OLIVER: The whole answer read this
24 time.

25 Q. Line 17, I asked you the question "Are

1 you aware of any specific injury that IGS has
2 suffered as a result of the reconciliation rider
3 being made nonbypassable?"

4 And you answered "Specifically, no. I
5 can only assume that there were customers that would
6 have switched if they could have -- in addition to
7 avoid -- avoided the standard service offer rate,
8 also avoided the reconciliation rider. The economics
9 of it would have made it more favorable to switching
10 to an IGS rate, but do I know that specifically?
11 No." Did I read that accurately?

12 A. Which is exactly what I just said.

13 MR. MICHAEL: Your Honor, I would move to
14 strike that response as nonresponsive. I think the
15 witness should be directed to give a "yes" or "no"
16 answer to a "yes" or "no" question.

17 MR. OLIKER: Your Honor, in this instance
18 it was exactly what he said. Wasn't even an
19 impeachment.

20 EXAMINER SCHABO: Motion to strike is
21 denied.

22 MR. SHARKEY: I have no further
23 questions, your Honor.

24 EXAMINER SCHABO: Thank you, Mr. Sharkey.
25 Mr. Boehm?

1 MR. BOEHM: No questions, your Honor.

2 EXAMINER SCHABO: Mr. Alexander?

3 MR. ALEXANDER: No questions, your Honor.

4 EXAMINER SCHABO: OMAEG?

5 MR. DRESSEL: No questions, your Honor.

6 EXAMINER SCHABO: OCC?

7 MR. MICHAEL: No questions.

8 EXAMINER SCHABO: Mr. Pritchard?

9 MR. PRITCHARD: No questions, your Honor.

10 EXAMINER SCHABO: No one else?

11 Mr. McNamee?

12 MR. McNAMEE: Surprisingly I do but only
13 two.

14 - - -

15 CROSS-EXAMINATION

16 By Mr. McNamee:

17 Q. Mr. Hess, page 26 of your testimony, line
18 1, the very end of the line I see the term
19 "regulatory formula." Do you see that?

20 A. Yes.

21 Q. Good. By regulatory formula do you mean
22 what's embedded in Revised Code 4909.15? The
23 ratemaking formula?

24 A. Yes.

25 Q. Also on that line you use the term

1 "regulatory compact." That doesn't appear in any
2 statute, does it, not specifically?

3 A. No, that term does not appear in any
4 statute that I am aware of.

5 Q. Okay.

6 A. The statute is the codification of the
7 regulatory compact.

8 MR. McNAMEE: Perfect. Exactly what I
9 needed. Thank you very much.

10 No further questions.

11 EXAMINER SCHABO: Thank you. Mr. Price?

12 - - -

13 EXAMINATION

14 By Examiner Price:

15 Q. If you could turn to page 14 of your
16 testimony.

17 A. I have that.

18 Q. You indicate that "AES Ohio Generation,"
19 at line 7, "sells all of its energy and capacity into
20 the wholesale market"; is that correct?

21 A. That's correct.

22 Q. You also indicate that they have
23 2,125 megawatts of power located in Ohio and Indiana.

24 A. Yes. It's right out of one of their
25 documents.

1 MR. OLIKER: Is that Ohio? Did you say
2 Ohio and Indiana?

3 EXAMINER PRICE: Uh-huh.

4 Q. And that is your knowledge as of the day
5 that you filed your testimony on February 12, 2019.

6 A. Again -- yeah, I used one of their
7 documents to come up with those statistics. It was
8 the AES 2017 Annual Report.

9 Q. And you swore today that all of your
10 answers are true and accurate to the best of your
11 knowledge; is that right?

12 A. Yes.

13 Q. And you were given an opportunity to make
14 corrections to your testimony. You made two; is that
15 correct?

16 A. That's correct.

17 Q. The state -- the 2,125 megawatts located
18 in Ohio, which generation stations does that include?

19 A. I'm sorry. I don't have the list of
20 that. I simply have the two pages of the 2017 Annual
21 Report. I don't have the complete Annual Report with
22 me.

23 Q. Does it include Tate Generation Station?

24 A. I'm sorry?

25 Q. Does it include Tate Generation Station?

1 A. Your Honor, I don't know.

2 Q. Montpelier?

3 A. I don't know.

4 Q. Hutchins?

5 A. I don't know.

6 Q. Monument?

7 A. Your Honor, I don't know what generating
8 stations are included.

9 Q. I am just asking if it refreshed your
10 recollection, Mr. Hess.

11 A. I'm sorry?

12 Q. I was just asking in case it refreshed
13 your recollection, Mr. Hess.

14 A. I don't remember.

15 Q. Sidney?

16 A. I don't remember.

17 Q. Yankee? Yankee Solar?

18 A. I don't know.

19 Q. Zimmer?

20 A. I don't have a document here in front of
21 me to be able to show that.

22 Q. Zimmer and Miami Fort?

23 A. I don't know.

24 Q. Conesville?

25 A. I don't know.

1 Q. Stuart? Killen?

2 A. I don't know.

3 Q. Are you aware any of those generation
4 stations have been closed?

5 A. I don't know the answer to that.

6 Q. Are you aware that in 2018 AES Ohio
7 Generation made a transaction where it sold peaking
8 units for a profit for an amount of \$239 million?

9 A. I'm just generally aware of it.

10 Q. Does that include any of these stations?

11 A. I don't know the answer to that.

12 Q. Do you know if -- so you don't know
13 whether any of the 2,125 megawatts that you reference
14 here were actually sold by AES Ohio Generation?

15 A. I don't know the answer to that.

16 Q. Do you know whether AES generation Ohio
17 owns any generation today after the sale of the
18 peaking units in the sale of Miami Fort and Zimmer?

19 A. To today?

20 Q. Today.

21 A. I don't know the answer to that.

22 EXAMINER PRICE: Thank you.

23 EXAMINER SCHABO: Thank you.

24 Mr. Olikier?

25 MR. OLICKER: If we may have just about 2

1 minutes? I think we will have very short recross. I
2 just want to talk to the witness for a second.

3 EXAMINER PRICE: Redirect.

4 MR. OLIKER: Redirect, hopefully no
5 recross.

6 EXAMINER SCHABO: Let's go off the
7 record.

8 (Discussion off the record.)

9 EXAMINER SCHABO: Let's go back on the
10 record.

11 Mr. Oliker.

12 MR. OLIKER: Thank you, your Honor.

13 - - -

14 REDIRECT EXAMINATION

15 By Mr. Oliker:

16 Q. Mr. Hess, do you remember when you were
17 asked a question about whether you reviewed Craig
18 Jackson's testimony?

19 A. Yes.

20 Q. Do you have any clarifications regarding
21 your response?

22 A. I understand that some of the workpapers
23 that I relied upon were -- in responses to
24 interrogatories were -- were workpapers that
25 supported Mr. Jackson's testimony.

1 Q. Okay. And do you remember the questions
2 you received regarding whether the DMR is an
3 incentive? Do you remember those questions?

4 A. Yes, sir, I do.

5 Q. And can you read the rest of your answer
6 from the deposition into the record? And you can
7 start with page 72, line 7, and just read the
8 question and the answer and then the question and the
9 answer going into page 73, line 3.

10 A. So we are going from page 72, line 7,
11 through page 73 --

12 Q. Line 3.

13 A. -- line 3.

14 MR. SHARKEY: I would object, your Honor.
15 He -- it's one thing that he's being entitled to
16 finish the rest of his answer to that question but
17 that's straying well beyond anything impeachment I
18 did with him. It was just that one answer.

19 MR. OLKER: Well, your Honor, there was
20 an objection in the question of the deposition just
21 as there was an objection when the question was asked
22 here, and the following question is when there was no
23 objection, and the question was legitimate.

24 EXAMINER PRICE: Mr. Sharkey, the
25 evidence rules would allow you to introduce evidence

1 of a prior consistent statement to offset the
2 impeachment of a witness, do they not? Why is that
3 not exactly what Mr. Olier is doing here?

4 MR. SHARKEY: I don't believe those --
5 those -- the following statements are evidence of
6 prior consistent statements, your Honor.

7 EXAMINER PRICE: I guess we'll get to
8 decide.

9 MR. SHARKEY: Understood, your Honor.

10 EXAMINER SCHABO: Mr. Hess, go ahead and
11 read that portion.

12 A. Page 72, line 7, "Do you believe that the
13 DMR would provide incentive to The Dayton Power and
14 Light -- to the Dayton Power and Light Company to
15 implement the smart grid?

16 "MR. OLIKER: Objection. You can go
17 ahead, if you can answer.

18 "THE WITNESS: Well, of course, getting
19 free money, you know, that you might invest into
20 something would be an incentive to invest in
21 something. So -- so you're suggesting to me that the
22 incentive is that the ratepayers have to give Dayton
23 Power and Light a hundred and five million dollars a
24 year as an incentive to comply with the commission's
25 plan to upgrade and modernize the distribution

1 system. Is that what your question is assuming?"

2 Q. And continue.

3 A. The next question "My question simply was
4 do you consider the DMR to be an incentive to The
5 Dayton Power and Light Company to implement smart
6 grid?

7 "Answer: I think the incentive is the
8 investment. The incentive would be in the return
9 that would be applied to the smart grid."

10 MR. OLIKER: Thank you. And we have no
11 more questions, your Honor.

12 EXAMINER SCHABO: Is there any recross?

13 MR. SHARKEY: No, your Honor.

14 EXAMINER SCHABO: All right. Thank you,
15 Mr. Hess.

16 MR. OLIKER: And with that we will move
17 for the admission of IGS Exhibit 1015 and IGS Exhibit
18 10 -- 1015C and --

19 EXAMINER SCHABO: 1015 and 1016C.

20 MR. OLIKER: -- we will move for the
21 admission of both the exhibits, your Honor.

22 EXAMINER SCHABO: Any objections?

23 Seeing none, they will be admitted.

24 (EXHIBITS ADMITTED INTO EVIDENCE.)

25 EXAMINER SCHABO: Your next witness?

1 MR. OLIKER: IGS would call Devin Crist
2 to the stand.

3 EXAMINER PRICE: Mr. Haugen has been
4 waiting longer than Mr. Crist. He was here
5 yesterday.

6 MR. OLIKER: I promised them both lunch,
7 so they are both waiting around.

8 (Witness sworn.)

9 EXAMINER SCHABO: Thank you very much.
10 Have a seat. State your name and your business
11 address, if it is not where you live.

12 THE WITNESS: Devin Crist, 6100 Emerald
13 Parkway.

14 EXAMINER PRICE: Another Bobcat. Is that
15 a requirement for IGS employees? OU grads?

16 THE WITNESS: I think so.

17 - - -

18 DEVIN CRIST
19 being first duly sworn, as prescribed by law, was
20 examined and testified as follows:

21 DIRECT EXAMINATION

22 By Mr. Oliker:

23 Q. Good afternoon, Mr. Crist.

24 A. Good afternoon.

25 Q. Have you presented direct testimony in

1 this case?

2 A. Yes, I have.

3 Q. And is that testimony placed before you
4 right now?

5 A. Yes, it is.

6 MR. OLIVER: Your Honor, we would mark
7 that document as Exhibit 1017.

8 EXAMINER SCHABO: So marked.

9 (EXHIBIT MARKED FOR IDENTIFICATION.)

10 Q. And, Mr. Crist, was this testimony
11 prepared by you or under your direction?

12 A. Yes, it was.

13 Q. And if you were asked these same -- do
14 you have any corrections to your testimony?

15 A. No, I don't.

16 Q. If you were asked these same questions
17 today, would your answers be the same?

18 A. Yes, they would.

19 MR. OLIVER: Your Honor, with that I
20 would move the admission of the exhibit and tender
21 the witness for cross-examination.

22 EXAMINER SCHABO: Let's start with cross.
23 Mr. Sharkey?

24 MR. OLIVER: I'm sorry, your Honor.
25 Before we go on, I intended to make a proffer

1 regarding Mr. Hess's testimony. Would you accept
2 that proffer now, although I had identified the
3 reasons for it before?

4 EXAMINER SCHABO: We'll come back to it.

5 - - -

6 CROSS-EXAMINATION

7 By Mr. Sharkey:

8 Q. Hello, Mr. Crist. My name is Jeff
9 Sharkey, and I represent The Dayton Power and Light
10 Company. It's true, isn't it, that your testimony
11 doesn't include an estimate of the costs to DP&L if
12 IGS were to default?

13 A. That's correct.

14 Q. Your testimony doesn't identify how many
15 customers IGS has in DP&L's service territory, right?

16 A. That's correct.

17 Q. Your testimony doesn't identify the kWh
18 per month that IGS serves, correct?

19 A. Correct.

20 Q. Turn, if you would, to page 3 of your
21 testimony.

22 A. I'm there.

23 Q. Line 21, first sentence says "My proposal
24 would result in a lower credit requirement for
25 privately held companies that are more consistent

1 with publicly traded companies." Did I read that
2 accurately?

3 A. Yes.

4 Q. Okay.

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

6 EXAMINER SCHABO: You may.

7 Q. (By Mr. Sharkey) Now, Mr. Crist, just to
8 orient yourself, this document is an excerpt of
9 DP&L's alternative generation coordination tariff.
10 The first page is page 1 of the document.

11 EXAMINER SCHABO: I'm sorry. Will you be
12 marking this?

13 MR. SHARKEY: Yes, I would, your Honor.
14 This will be DP&L Exhibit 1002.

15 EXAMINER SCHABO: Thank you. So marked.

16 (EXHIBIT MARKED FOR IDENTIFICATION.)

17 Q. And pages -- next two pages of the
18 document, which are labeled pages 23 and 24, contain
19 paragraph 12.4 Guarantee of Payments. Do you see
20 that?

21 MR. OLIKER: Objection.

22 A. Yes.

23 MR. OLIKER: Which -- can we establish
24 some foundation for this document and which version
25 of the alternative generation supplier coordination

1 tariff this is? I don't think that's clear.

2 EXAMINER SCHABO: Yeah. Let's go ahead
3 and do that.

4 MR. SHARKEY: Sure. I am going to ask
5 him some questions about it. I am just orienting him
6 to what those pages are I printed off, and I will ask
7 questions.

8 Q. (By Mr. Sharkey) Have you reviewed
9 paragraph 12.4 of DP&L's tariff?

10 MR. OLIKER: Objection. The proposed
11 tariff or this tariff? I still -- if we are talking
12 about this document, I want to make sure that the
13 witness knows this specific version, and I don't know
14 that yet.

15 EXAMINER SCHABO: I may have interrupted
16 you when I asked if you were going to mark this.
17 Could you identify exactly what we are looking at.

18 MR. SHARKEY: Yes, your Honor. It is the
19 tariff, and as it states at the bottom, it was filed
20 pursuant to the Opinion and Order in this case dated
21 October 20, 2017.

22 EXAMINER SCHABO: Okay. Is that
23 sufficient for you, Mr. Olikier? Because it's
24 sufficient for me.

25 MR. OLIKER: If Mr. Sharkey could

1 represent this document represents the proposed
2 tariff, I think that would be sufficient for my
3 purposes just because this is -- it's a little
4 different. This is the after filed version relative
5 to what Mr. Crist, I believe, may have addressed in
6 his testimony. That may not be largely different but
7 there may be a slight disconnect. He may not have
8 seen this specific document given the posture of his
9 testimony.

10 And we still haven't established that,
11 but if he'll represent this is the tariff that was
12 proposed in this case, I'm fine if we can just
13 stipulate to that.

14 MR. SHARKEY: The tariff that was
15 proposed and approved by the Commission, your Honor,
16 pursuant to the Commission's October 20, 2017, order
17 as available on The Dayton Power and Light Company's
18 website.

19 MR. OLKER: Then I am fine to withdraw
20 that objection.

21 EXAMINER SCHABO: Thank you. Continue.

22 Q. (By Mr. Sharkey) Mr. Crist, have you seen
23 this document before, or at least the excerpts that I
24 am showing to you?

25 A. I reviewed the tariff that was available

1 at the time of my testimony.

2 Q. Okay. And your testimony was dated
3 February 12, 2019?

4 A. I believe so.

5 Q. Okay. And you see the tariff sheets I
6 handed to you were effective November 1, 2017?

7 A. Yes.

8 Q. Okay. Assuming there has been no updates
9 or changes, then it's your belief that you reviewed
10 and studied the pages I handed to you?

11 A. Yes.

12 Q. Okay. Focusing here on paragraph 12.4
13 Guarantee of Payments, that's the subject of your
14 testimony, right?

15 A. Yes.

16 Q. It's true, isn't it, you can't point me
17 to any language in that paragraph that treats
18 publicly-traded companies more favorably than
19 privately-held companies, right?

20 A. It doesn't mention public or private,
21 correct.

22 Q. On page -- what's denominated page 24,
23 the last page of the exhibit, towards the bottom
24 there's a paragraph that's indented that begins "DP&L
25 will calculate the amount." Do you see that?

1 A. Yes.

2 Q. And then it's true, isn't it, that
3 paragraph goes on to describe how DP&L would
4 calculate the collateral that a CRES provider is
5 obligated to provide, right?

6 MR. OLIKER: Objection. Calls for a
7 legal conclusion, discounts the rest of the tariff.

8 EXAMINER SCHABO: Could you read the
9 question back, please.

10 MR. OLIKER: Misstates his testimony.

11 (Record read.)

12 EXAMINER SCHABO: Overruled. Please
13 answer the question.

14 THE WITNESS: Can you repeat one more
15 time.

16 (Record read.)

17 A. That is correct.

18 Q. And you do not claim that DP&L has
19 calculated IGS's collateral in some measure or some
20 way different than what's identified in that
21 paragraph, right?

22 A. And that's how it's being calculated
23 currently.

24 Q. IGS is a privately-held company, correct?

25 A. That's correct.

1 Q. Do you know whether publicly-traded
2 companies are obligated to make filings with the
3 Securities Exchange Commission?

4 A. They are responsible and obligated to do
5 that, yes.

6 Q. Do you know whether they are obligated to
7 file audited financial statements?

8 A. They are required, yes.

9 Q. Okay. Do you know whether those
10 financial statements are required to be attested to
11 by management?

12 A. They are.

13 Q. Okay. Do you know how often those
14 financial statements need to be updated?

15 A. I believe quarterly.

16 Q. And IGS is not subject to any of those
17 requirements, correct?

18 MR. OLIKER: Objection. By requirements
19 is he talking SEC requirements or the general
20 requirements that were referenced in some fashion? I
21 guess the question is vague and open to different
22 interpretations.

23 EXAMINER SCHABO: Overruled.

24 A. We are held by those standards I guess
25 for different reasons than the SEC or the reasons

1 that publicly-traded companies have to file.

2 Q. IGS doesn't make any SEC filings.

3 A. That's correct.

4 Q. Publicly disclosed type of information I
5 was describing.

6 A. That's correct.

7 Q. IGS has, in fact, been able to post a
8 bond in DP&L's service territory, correct?

9 A. Based off the strength of our financials,
10 we were able to post a bond.

11 Q. Okay. And you haven't done any analysis
12 regarding whether reducing the amount of the bond
13 would have any impact on the prices that IGS charges
14 to customers, correct?

15 A. I'm responsible for calculating and
16 posting all of the collateral that IGS is required to
17 post. All of the fees that were charged are
18 basically calculated and included in our rates that
19 go through our customers, so reducing the fees that
20 we pay on collateral would effectively reduce the
21 fees or the rates that we charge our customers.

22 Q. Has that changed since the time -- let me
23 step back.

24 You provided testimony in The Dayton
25 Power and Light Company's distribution rate case on

1 the subject of IGS's requirements to post collateral,
2 right?

3 A. Correct.

4 Q. Okay. And without going question by
5 question, your testimony there was similar to the
6 testimony you filed here, right?

7 A. Correct.

8 Q. Okay. And from the time of your
9 testimony in the distribution rate case to today, did
10 you perform an analysis of whether reducing the
11 amount of the bond would have the -- would have an
12 impact on prices that IGS offers to customers?

13 MR. OLIKER: Objection. What's the
14 relevance? He just said he did one now, and we are
15 talking about his testimony in this case. It's
16 almost like he is trying to do impeachment by
17 external collateral fact.

18 EXAMINER SCHABO: Or a prior inconsistent
19 statement.

20 MR. OLIKER: But he asked him simply if
21 he has done any analysis and Mr. Crist said yes and
22 he provided a very thoughtful answer. Whether he did
23 in the distribution case or not and when he did the
24 analysis doesn't really matter. It's not relevant to
25 what we are talking about here.

1 MR. SHARKEY: I didn't ask him when he
2 did the analysis, your Honor.

3 EXAMINER SCHABO: Then why don't you ask
4 him when he did the analysis.

5 Q. When did you do an analysis to determine
6 whether or not the amount that -- of the collateral
7 would affect the prices that IGS charges to
8 customers?

9 A. As part of my duties, that analysis is
10 performed monthly so I believe prior answers it
11 was -- it was specific analysis for this very
12 specific bond, no, but that's something that's
13 performed every month. So every month we compile
14 every fee associated with collateral and determine a
15 rate that needs to be included as part of our rates
16 to our customers.

17 So specifically to that bond, it's just
18 probably we have not performed that specific
19 analysis. It's part of a monthly process that we
20 issue rates and provide it to our supply team when
21 they determine the rates for our customers.

22 Q. Okay. Was that monthly process in place
23 before your testimony in the distribution rate case?

24 A. It's been ongoing for years.

25 MR. SHARKEY: Your Honors, may I

1 approach?

2 EXAMINER SCHABO: You may.

3 MR. SHARKEY: I have a copy of your
4 deposition transcript. Unfortunately due to error by
5 me, I brought only one copy, but I will be happy to
6 give my copy to Joe. And this is testimony from your
7 distribution -- your deposition from the distribution
8 rate case.

9 EXAMINER SCHABO: Could you just show it
10 to Joe first?

11 MR. SHARKEY: Sure.

12 EXAMINER SCHABO: Sorry, Mr. Olikar.

13 MR. OLIKAR: And it's on the subject we
14 are talking about. Now I think I will object to its
15 use given that we've already established that that
16 was a while ago, and he is talking about the analysis
17 he has done for this case. What he may have done in
18 the distribution case is not relevant to this but.

19 EXAMINER PRICE: He already testified
20 that nothing's changed.

21 MR. OLIKAR: Okay.

22 Q. (By Mr. Sharkey) Mr. Crist, I am
23 directing your attending to page 26, line 22. In
24 your deposition in that case I asked you the question
25 "And did you do any analysis to determine whether

1 reducing the amount of collateral would have any
2 impact on the rates that IGS offers to residential
3 customers?

4 "Answer: No. No analysis on the ratings
5 that we would offer and all our costs are inherent in
6 our rates but the exact amount, no, there was no
7 analysis of it." Did I read that correctly?

8 MR. OLIKER: Again, I would object.

9 A. Yes, that's accurate.

10 MR. OLIKER: Inherent to rates which is
11 consistent with what he said, that rates for
12 collateral are in those rates. It's not impeachment.

13 EXAMINER SCHABO: I think that's for the
14 Commission to determine. Thank you.

15 Q. How often do you change your prices?
16 Strike that.

17 How often does IGS change its prices,
18 Mr. Crist?

19 A. I don't set the prices, so I wouldn't
20 know.

21 Q. You understand that the price DP&L
22 charges for distribution service, for example, is set
23 by the Commission on a -- using a mechanism to set
24 cost-based rates, correct?

25 A. Could you repeat?

1 Q. Sure. Make it more simply you understand
2 that DP&L's distribution rate case -- case -- rates
3 are set via a distribution rate case in which DP&L
4 presents evidence as to its cost of providing
5 distribution service, right?

6 A. Correct.

7 Q. Okay. IGS's prices are set in some form
8 of a market mechanism where IGS and the customers
9 have agreed to the price, correct?

10 A. Correct.

11 Q. So one mechanism for price setting is
12 it's simply two parties agree to a price, right?

13 A. I would agree.

14 Q. Do you know what RESA is?

15 A. I've heard of it.

16 Q. Do you know if RESA is a party to the
17 Amended Stipulation?

18 A. Can you repeat the question?

19 Q. Do you know if RESA is a party to the
20 Amended Stipulation?

21 A. I do not know.

22 MR. SHARKEY: No further questions, your
23 Honor.

24 EXAMINER SCHABO: Thank you.

25 Mr. Michael?

1 I'm sorry. I never caught your name.

2 MR. DRESSEL: Brian Dressel.

3 EXAMINER SCHABO: Mr. Dressel?

4 MR. DRESSEL: No questions, your Honor.

5 EXAMINER SCHABO: Mr. Boehm?

6 MR. BOEHM: No questions.

7 EXAMINER SCHABO: Mr. McNamee?

8 MR. McNAMEE: No questions.

9 MR. OLIKER: Just briefly, your Honor, I
10 think I have one or two questions, but I would like
11 to take a minute given that it looks like we have a
12 lot of time before the Commission meeting.

13 (Discussion off the record.)

14 EXAMINER SCHABO: Let's go back on the
15 record.

16 MR. OLIKER: Thank you, your Honor.

17 - - -

18 REDIRECT EXAMINATION

19 By Mr. Oliker:

20 Q. Mr. Crist, do you remember questions you
21 received from counsel from DP&L regarding Section
22 12.4?

23 A. Yes.

24 Q. And I think that was -- that section was
25 referred to as a paragraph but would you agree --

1 Section 12.4 is a very large paragraph. So could you
2 provide some clarity on which specific provision
3 within paragraph 12.4 provides the foundation for
4 your testimony?

5 A. Yeah. On page 24 the bottom of the
6 second paragraph is the basis of my testimony. It
7 states the security must be and remain commensurate
8 with the financial risks placed on the Company by the
9 supplier. My testimony is giving examples of how
10 that can apply -- that can be taken into
11 consideration through financial strength, diversity
12 of business, and years of service which actually
13 is -- is stated in here that it would give
14 consideration.

15 MR. OLIKER: Okay. Thank you, Mr. Crist.
16 Those are all the questions I have.

17 EXAMINER SCHABO: Is there any recross?

18 MR. SHARKEY: No, your Honor.

19 EXAMINER SCHABO: Mr. Price?

20 - - -

21 EXAMINATION

22 By Examiner Price:

23 Q. You appeared before the Commission in the
24 distribution rate case; is that correct --

25 A. Correct.

1 Q. -- on this topic?

2 A. Correct.

3 Q. Has anything changed in Dayton Power and
4 Light's policies since your last testimony?

5 A. Not that I'm aware of, not to my
6 knowledge.

7 Q. Related to what you do, related to this
8 topic.

9 A. Correct.

10 EXAMINER PRICE: Okay. Thank you.

11 EXAMINER SCHABO: Thank you, Mr. Crist.
12 Mr. Oliker.

13 MR. OLIKER: And IGS would move for the
14 admission of Mr. Crist's testimony.

15 EXAMINER SCHABO: Is there any
16 objections?

17 Seeing none, it will be admitted.

18 (EXHIBIT ADMITTED INTO EVIDENCE.)

19 EXAMINER SCHABO: Mr. Sharkey?

20 MR. SHARKEY: We would move for the
21 admission of DP&L Exhibit 1002.

22 EXAMINER SCHABO: Mr. Oliker, you're
23 pondering an objection right now.

24 MR. OLIKER: I feel that the exhibit is
25 inappropriate inasmuch as we are trying the electric

1 security plan, and he provided an exhibit that is
 2 based upon a filed tariff. Technically speaking what
 3 we are discussing should be the proposed tariff
 4 language rather than the document that Mr. Sharkey
 5 has put before the witness. If he would be willing
 6 to substitute -- substitute the exhibit for the
 7 application itself, which technically would be in the
 8 record, I think that would be much more appropriate.

9 EXAMINER PRICE: Why is it -- why is that
 10 so?

11 MR. OLIKER: Because --

12 EXAMINER PRICE: We are here today
 13 because of the unique procedural circumstances of
 14 your withdrawal from the Stipulation. Why is
 15 Mr. Sharkey not entitled to present an exhibit which
 16 is Dayton's actual Commission-approved tariff?

17 MR. OLIKER: Because it's somewhat
 18 misleading because we have an opportunity to litigate
 19 this case based upon what was actually proposed and I
 20 think it was established yesterday that DP&L didn't
 21 put any evidence into the record regarding whether
 22 these changes are suitable because Mr. Park, or
 23 whoever it was that was supposed to sponsor it, never
 24 testified. And now we have simply this document
 25 that's going to be referenced rather than what should

1 be is the redlined tariff that shows what did the
2 world look like before the Stipulation and what is it
3 proposed to be.

4 I think that's a much more accurate
5 reflection of what we should be litigating rather
6 than another tariff which may put the cart before the
7 horse. I think it would also be duplicative and
8 misleading given that the proposed tariff language
9 should provide a complete picture rather than the
10 world in isolation.

11 EXAMINER SCHABO: The past two-and-a-half
12 days we've referenced multiple events that happened
13 after the application, after the Amended Stipulation
14 was signed, after it was modified. Why do we have to
15 go back to the beginning for this specific as though
16 nothing else happened afterwards?

17 MR. OLIKER: Part of the reason is trying
18 to ensure that the other tariff language is in the
19 case. If you remember, in the distribution rate
20 case, they forgot to mark the application, and I
21 can't remember if that happened here or not. And if
22 that's the case, then we will have a singular view of
23 the tariff language rather than the proposed tariff
24 language and redline. That would somewhat mitigate
25 the prejudice, I believe, but I don't have it in

1 front of me whether or not the application in the
2 tariff language is in the record.

3 EXAMINER SCHABO: Overruled.

4 MR. OLIKER: And to the extent that it's
5 not, your Honor, as long as there is administrative
6 notice or it's been marked and I can cite to it
7 freely, then I think that any prejudice would be
8 somewhat mitigated, and I think the Dayton Power and
9 Light represented the application did include the
10 proposed and existing language, but I can't confirm
11 that.

12 EXAMINER PRICE: You are not going to be
13 prejudiced on this issue because this issue is an
14 improper collateral attack on the distribution rate
15 case finding. So the fact that one testimony is
16 proposed -- or one tariff is proposed and one tariff
17 is final is unlikely to weigh in that final decision.

18 MR. OLIKER: That may be the Commission's
19 decision, your Honor. I can't tell that today.

20 EXAMINER SCHABO: Your objection is
21 noted, but the exhibit will be admitted.

22 (EXHIBIT ADMITTED INTO EVIDENCE.)

23 EXAMINER SCHABO: Did you want to go
24 ahead and do your proffer now before we take
25 Mr. Haugen?

1 MR. OLIKER: I did. I simply wanted to
2 proffer the portions of Mr. Hess's testimony that
3 were stricken for the same reasons that I voiced at
4 the time that the motion came about. I think it's
5 clear that the testimony identifies that there are
6 potential competitive impacts on Ohio businesses such
7 as IGS, and I think it's important for the Commission
8 to consider that as its granting the DMR which has
9 been described as a subsidy by many witnesses, that
10 it's important to consider the other impacts on Ohio
11 businesses when you're handing out such subsidies and
12 for the other reasons I stated earlier.

13 EXAMINER SCHABO: Is that your proffer?

14 MR. OLIKER: Thank you, your Honor.

15 EXAMINER PRICE: Call your next witness.

16 MR. OLIKER: IGS would call Joseph Haugen
17 to the stand.

18 (Witness sworn.)

19 EXAMINER PRICE: Finally a Buckeye.
20 Please state your name and business address for the
21 record.

22 THE WITNESS: My name is Joseph Haugen.
23 My business address is 6100 Emerald Parkway, Dublin,
24 Ohio.

25 EXAMINER PRICE: Please proceed,

1 Mr. Oliker.

2 - - -

3 JOSEPH HAUGEN

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

6 DIRECT EXAMINATION

7 By Mr. Oliker:

8 Q. Good afternoon, Mr. Haugen. Have you
9 prepared direct testimony in this proceeding?

10 A. I have.

11 Q. And is that testimony in front of you
12 now?

13 A. It is.

14 Q. And was that testimony prepared by you or
15 under your direction?

16 A. Yes.

17 Q. And do you have any changes to make to
18 that testimony?

19 A. I don't.

20 MR. OLIER: Your Honor, I would like to
21 mark Mr. Haugen's direct testimony. I believe we are
22 on 1018.

23 EXAMINER PRICE: It will be so marked.

24 (EXHIBIT MARKED FOR IDENTIFICATION.)

25 Q. (By Mr. Oliker) And, Mr. Haugen, if you

1 were asked the same questions today, would your
2 answers be the same?

3 A. They would.

4 MR. OLIKER: Okay. With that, your
5 Honor, I would move the exhibit and tender the
6 witness for cross-examination.

7 EXAMINER PRICE: Company?

8 - - -

9 CROSS-EXAMINATION

10 By Mr. Hollon:

11 Q. Good afternoon, Mr. Haugen. You're
12 familiar with the Amended Stipulation filed in this
13 case, correct?

14 A. I am.

15 Q. And you understand that the Commission
16 modified and approved the Amended Stipulation,
17 correct?

18 A. I believe so.

19 Q. And your written testimony in this case
20 addresses DP&L's Reconciliation Rider as approved in
21 that case?

22 A. That's correct.

23 Q. And in particular it presents your
24 opinion as to how the Reconciliation Rider would
25 function under two proposals that have been submitted

1 by PJM to the Federal Energy Regulatory Commission,
2 correct?

3 A. That's correct.

4 Q. We'll get to those proposals in a second;
5 but, first, you're familiar with PJM's Open Access
6 Transmission Tariff, correct?

7 A. I am familiar, but if you are going to
8 refer to it, I would prefer to see it specifically.

9 Q. Just generally?

10 A. Yes.

11 Q. And you're familiar with an order issued
12 by FERC last June finding that PJM's tariff is unjust
13 and unreasonable as it relates to certain capacity
14 market rules?

15 A. That's correct.

16 Q. Now, in that order FERC did not make a
17 final determination regarding what a just and
18 reasonable replacement tariff would be, correct?

19 A. That's correct.

20 Q. Instead the order solicited proposals for
21 a just and reasonable replacement rate from
22 interested parties, correct?

23 A. Correct.

24 Q. Now, PJM has submitted two alternative
25 proposals to address that order, correct?

1 A. Yes.

2 Q. The resource carveout and the extended
3 resource carveout?

4 A. That's correct.

5 Q. Have any parties opposed those proposals?

6 A. I have not reviewed any specific parties
7 that have opposed it, but I would assume that several
8 have.

9 Q. Okay. And have alternative proposals
10 been submitted by other parties?

11 A. I have not reviewed any alternative
12 proposals, but I can assume that several have.

13 Q. Okay. You characterized the proceeding
14 in which those proposals were made by PJM as a
15 significant one to FERC, correct?

16 A. I would.

17 Q. And FERC has not either adopted or
18 rejected any of those proposals as of today, correct?

19 A. That's correct.

20 Q. And you do not know when FERC will rule
21 on any of those proposals, correct?

22 A. I do not know when.

23 Q. And you don't know how FERC will rule on
24 any of those proposals, correct?

25 A. It is difficult to determine specifically

1 how they will rule on these proposals. But it --
2 there is an assumption that a change will be coming.

3 Q. Okay. But you don't know what change
4 will come, correct?

5 A. Not specifically.

6 Q. Okay. And so PJM's Open Access
7 Transmission Tariff as it relates to those capacity
8 market rules that were at issue in last June's order
9 have not been modified, correct?

10 A. Not currently.

11 Q. And do you know whether a request for
12 rehearing has been filed with FERC as to that June
13 2018 order?

14 A. I don't.

15 MR. HOLLON: Okay. Your Honor, at this
16 time I would like to move to strike Mr. Haugen's
17 direct testimony as inadmissible speculation. It's
18 entirely premised on what FERC may do in the future,
19 and he's testified here today that he doesn't know
20 when or what that report will look like.

21 MR. OLIKER: Your Honor, the standard for
22 testimony is relevance to the proceeding. Macro
23 level changes that may have an impact on this -- on
24 the proceeding and the rates that customers may pay
25 are absolutely relevant and there is a very high

1 likelihood that before the Commission issues its
2 ruling in this case, there will be a ruling and it
3 will be a very public ruling and we have the ability
4 to cite freely to FERC dockets, so I don't think it
5 makes a lot of sense to simply keep out the evidence
6 because we don't know exactly what PJM or FERC are
7 going to do when we have a very -- very strong
8 indication that they are going to do something. And
9 whatever it is it's going to affect us. So to act
10 like it's not happening is simply not very helpful
11 for the development of the record.

12 EXAMINER PRICE: I think something but
13 it's going to affect us is a very -- is a very weak
14 standard, Mr. Oliker. And I also note even when FERC
15 issues its ruling, it's likely that it will be
16 appealed to some relevant Circuit Court of Appeals,
17 and we don't know when we will get an actual final
18 non-appealable order.

19 Nonetheless, I believe the information is
20 helpful to the Commission to make its decision, and
21 the motion to strike is denied.

22 MR. HOLLON: Thank you, your Honor.

23 Q. (By Mr. Hollon) Mr. Haugen,
24 hypothetically if FERC were to approve PJM's --
25 either of PJM's proposals, your opinion presented in

1 your written testimony does not turn on whether the
2 Reconciliation Rider is bypassable or nonbypassable,
3 correct?

4 MR. OLIKER: Can I have the question read
5 again?

6 EXAMINER PRICE: You may.

7 (Record read.)

8 A. The implications to the wholesale market
9 would not be changed due to it being bypassable or
10 nonbypassable.

11 Q. Okay. And your testimony does not
12 address what would happen if FERC were to approve
13 either of PJM's proposals on any energy revenue that
14 DP&L would collect by virtue of its OVEC interest?

15 A. That's correct. It focuses specifically
16 on capacity markets.

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

19 EXAMINER PRICE: Thank you.

20 Mr. Boehm?

21 MR. BOEHM: No questions.

22 EXAMINER PRICE: Mr. Alexander?

23 MR. ALEXANDER: No, thank you.

24 EXAMINER PRICE: Mr. Dressel?

25 MR. DRESSEL: No, thank you, your Honor.

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EXAMINER PRICE: OCC?

MR. MICHAEL: None, your Honor.

EXAMINER PRICE: Mr. Pritchard?

MR. PRITCHARD: No questions, your Honor.

EXAMINER PRICE: Mr. McNamee?

MR. McNAMEE: No questions, your Honor.

Thank you.

MR. OLIKER: Your Honor, unless you have anything you want to discuss, I just have one question to follow up.

EXAMINER PRICE: I hadn't called on you.

MR. OLIKER: Do you have questions?

EXAMINER PRICE: Redirect?

- - -

REDIRECT EXAMINATION

By Mr. Oliker:

Q. Mr. Haugen, do you remember when you received questions about whether or not you reviewed the proposals of other parties?

A. I do.

Q. Do you -- did you feel that you needed to review the proposals of other parties besides PJM?

A. I did not. It seemed at the time that PJM was going to go down the path of their proposal as well as the current rules with an understanding

1 that FERC will have a ruling in time for the next
2 capacity auctions.

3 Q. And in your view from a wholesale market
4 perspective, who is the entity that has the largest
5 influence on the capacity markets?

6 A. In the PJM area I would say PJM.

7 MR. OLIKER: Okay. Thank you.

8 Those are all the questions I have.

9 MR. HOLLON: Your Honor, one question on
10 recross.

11 EXAMINER PRICE: You can ask. Go ahead.

12 - - -

13 RECROSS-EXAMINATION

14 By Mr. Hollon:

15 Q. Mr. Haugen, it's true though that FERC
16 has instructed -- I'm sorry, strike that, that PJM is
17 having interested -- parties interested in
18 participating in its capacity market auction this
19 year act as if the tariff that is currently in place
20 will still be in place when the auction occurs.

21 A. It is true that PJM is taking several
22 paths with regard to their capacity auction this
23 year, and one of those paths are the standard rules
24 or the current rules that are in place right now.

25 MR. HOLLON: Thank you.

1 EXAMINER PRICE: Any other recross?

2 You may step down. Thank you.

3 Mr. Oliker.

4 MR. OLIKER: Thank you, your Honor. IGS
5 would move for the admission of Mr. Haugen's
6 testimony.

7 EXAMINER PRICE: Any objections?

8 Seeing none, it will be admitted.

9 (EXHIBIT ADMITTED INTO EVIDENCE.)

10 EXAMINER PRICE: Mr. Michael?

11 MR. MICHAEL: Yes, your Honor?

12 EXAMINER PRICE: Anything else?

13 MR. MICHAEL: Cross?

14 EXAMINER PRICE: No. We are done with
15 our witnesses.

16 MR. MICHAEL: Oh, wonderful. Well, your
17 Honor, I was misled.

18 Your Honor, OCC would request the
19 opportunity to file rebuttal testimony in response to
20 testimony by Mr. White. OCC would suggest to the
21 Bench that it will be limited, forthright, and very
22 informative for the Commission and allow the
23 Commission to have a full, accurate, and complete
24 record in this case, and OCC would propose that it
25 file its rebuttal testimony a week from tomorrow.

1 And then, you know, we would be willing to have a
2 hearing as soon thereafter as the parties would be
3 willing to do so on our rebuttal testimony to the
4 extent there is any cross-examination.

5 EXAMINER PRICE: Assuming for the sake of
6 argument that Mr. Olikier has not already given you a
7 John Doe/Jane Doe notice of deposition for rebuttal
8 witnesses, would you agree to make any witnesses who
9 prefiled testimony available to Mr. Olikier for
10 deposition?

11 MR. MICHAEL: Most certainly.

12 MR. OLIKER: Your Honor, may I respond
13 before you rule?

14 EXAMINER PRICE: Oh, absolutely.

15 MR. OLIKER: I would initially note that
16 it is highly unusual in an electric security plan
17 case for a non-company party to be permitted to file
18 rebuttal testimony, and I tried to look through the
19 dockets to see where this has happened. It's been
20 requested many times, but it's never been granted,
21 and I cannot identify any time in Commission practice
22 where a party has been permitted to file rebuttal
23 other than the Company that does have the burden of
24 proof.

25 And I would also add that this case,

1 although the situation is unique in many respects it
2 has been tried, that this is simply an extension of
3 the initial hearing and if this had occurred when the
4 initial hearing was going on and IGS had not been a
5 signatory in any fashion, it simply would have been
6 OCC and IGS filing their testimony on the exact same
7 day and the parties would have gone in due course
8 just as we have set up this transcript of going day
9 by day 1 through I believe we are on 8 or something
10 along those lines now.

11 And I believe under those circumstances
12 OCC's request would be flatly rejected out of course
13 just as has been rejected in each and every other
14 request over -- and also requests that I believe my
15 own company or my own clients have made. So I don't
16 think that this situation, although the circumstances
17 are slightly unique, somehow should permit OCC to
18 file rebuttal testimony.

19 This isn't a distribution rate case where
20 parties do have the opportunity to file rebuttal
21 testimony as of right, and to the extent that it's
22 permitted here, I think it opens the door to
23 additional rounds of testimony in the future.

24 EXAMINER PRICE: In your precedence you
25 reviewed, was there any precedent where a signatory

1 party withdrew and then requested a second round of
2 hearing to turn the clock back to the time to where
3 prior to the signing onto the stipulation?

4 MR. OLIKER: That particular situation
5 has not happened but the way it's played out I don't
6 think it makes a difference given the way that the
7 hearing days have simply rolled in order, and it's
8 simply just changed the order of the witnesses.

9 EXAMINER PRICE: Mr. Michael, what do you
10 make of his contention that had they never signed the
11 stipulated -- the Stipulation, they would have filed
12 Mr. White's testimony on the same day you filed your
13 testimony, and you would have had no chance to file
14 rebuttal or to respond to it?

15 MR. MICHAEL: Well, I would respond first
16 that Mr. Olier's research skills may need brushed up
17 because in the Duke ESP case, we requested and were
18 granted the opportunity to file rebuttal testimony on
19 an issue very similar to this. So it's certainly not
20 without precedent, your Honor, is my point.

21 Further, I would say that the unique
22 circumstances that Mr. Olier himself has recognized
23 kind of swallows his objection in this case. As I
24 think your Honor pointed out, there's never been an
25 occasion where a signatory party has withdrawn, and

1 then we've started the hearing over again, so it's
2 just -- first off, it's a very different set of
3 circumstances in this case. Second off, it is not
4 without precedent.

5 MR. OLIKER: Your Honor, the Duke case
6 was a distribution case that was consolidated with an
7 ESP, so I don't think it's fair to say the rebuttal
8 testimony related to the ESP. It related to the
9 objections to the Staff Report and the unbundling
10 analysis regarding the distribution rate case,
11 specific issues. So with that clarification, I'll
12 rest.

13 EXAMINER PRICE: Mr. Sharkey, do you care
14 to weigh in on this?

15 MR. SHARKEY: Your Honor, pains me as it
16 does, I will agree with Mr. Olier on this situation.

17 MR. OLIKER: Otherwise, you know what's
18 going to happen next time we have an ESP.

19 MR. SHARKEY: In that I'll second his
20 arguments, and I would also make the additional point
21 that given that OCC has an appeal pending, you know,
22 we think OCC has to pick one path or the other. The
23 path it picked it should stay on it and shouldn't be
24 able to eat its cake and have it too.

25 MR. ALEXANDER: Your Honor, before you

1 rule, the City of Honda joins Mr. Olikier and
2 Mr. Sharkey's arguments as well.

3 MR. OLIKER: Starting a stipulation.

4 EXAMINER PRICE: I think with respect to
5 the appeal, as I said repeatedly in this proceeding,
6 it's a curious case whether the appeal is going to be
7 dismissed or going to be prosecuted. I think there
8 is strong arguments on both sides that the
9 Commission's initial decision is and is not a final
10 appealable order, and I don't think we need to get to
11 it.

12 What I am struggling with is these ESP
13 cases do tend to be pretty broad and whether --
14 trying to roll back my own brain to simultaneous
15 filed, if a party brings up a matter totally
16 extraneous to the ESP's application, whether all
17 circumstances you would not allow a party that's
18 being prejudiced by that totally extraneous issue to
19 not file rebuttal testimony.

20 Therefore, given the incredibly unique
21 circumstances of this case, we will allow you
22 rebuttal testimony. I do want to caution you though
23 it needs to stay exactly within the parameters of
24 Mr. White's testimony.

25 MR. MICHAEL: It will, your Honor.

1 EXAMINER PRICE: To the extent you
2 deviate from that will be stricken without --

3 MR. MICHAEL: Arguments?

4 EXAMINER PRICE: -- motion by the party
5 and without argument. You said you can file it a
6 week from day?

7 MR. MICHAEL: My suggestion filed a week
8 from tomorrow.

9 EXAMINER PRICE: Week from tomorrow.

10 MR. MICHAEL: That would give us a week
11 to get it together and then we could go to the
12 hearing if the parties want to have a hearing as soon
13 thereafter as your Honors and the parties would like.

14 MR. OLKER: Your Honor?

15 EXAMINER PRICE: Yes.

16 MR. OLKER: One of the things I would
17 like to bring up is I mentioned this when we selected
18 this trial date is that we have several conflicts
19 that start April 19. I think it's unfortunate the
20 testimony can't be filed sooner than a week from
21 tomorrow given that OCC was aware of this issue and
22 that puts us in quite a crunch because we will need
23 time to evaluate the testimony not knowing the length
24 of it and the earliest we can go back to trial and
25 then it's going -- once we finish it puts us in a

1 situation where I am immediately out the state for
2 about 10 days where I can't work on a brief so that's
3 somewhat frustrating. I was hoping to have the
4 initial brief done before April 19 or that time
5 frame.

6 EXAMINER PRICE: I sympathize with your
7 plight. We are all very overextended. I think
8 Ms. Fleisher was particularly overextended in this
9 case. I know that she had briefs due during your
10 proceeding on the dates you chose. So we are just
11 going to have to live with that.

12 But I will ask OCC to file a week from
13 yesterday, if you can accelerate your filing, and we
14 will pick a hearing date with at least two or three
15 days in between the filing date so you can do a
16 deposition but before April 19. And we will put it
17 out by subsequent entry because I don't have my
18 calendar, let alone Ms. Schabo's calendar in front of
19 me right now.

20 MR. OLIKER: And I think you said
21 something that works and just sometime between the
22 12th being the earliest and sometime before the 19th?

23 EXAMINER PRICE: Yes.

24 MR. OLIKER: Yes.

25 EXAMINER PRICE: I assume we can get both

1 witnesses down -- one or two pieces? One. I assume
2 we can do that one witness in one day.

3 MR. OLIKER: Yes. If there are multiple
4 witnesses, we may ask for relief.

5 EXAMINER PRICE: I will though caution
6 Mr. Michael if the court does dismiss your pending
7 appeal, it's just going to push back your opportunity
8 to file a new appeal on this case so.

9 MR. MICHAEL: Duly noted, your Honor.

10 EXAMINER PRICE: You are taking your
11 chances.

12 MR. OLIKER: It's going to be dismissed.

13 EXAMINER PRICE: With that we are
14 adjourned. We will set a new hearing date to hear
15 OCC's rebuttal witness by subsequent entry.

16 Thank you, all.

17 (Thereupon, at 12:52 p.m., the hearing
18 was adjourned.)

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CERTIFICATE

I do hereby certify that the foregoing is
a true and correct transcript of the proceedings
taken by me in this matter on Wednesday, April 3,
2019, and carefully compared with my original
stenographic notes.

Karen Sue Gibson, Registered
Merit Reporter.

(KSG-6723)

- - -

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

Summary: Transcript in the matter of the Dayton Power and Light Company hearing held on 04/03/19 - Volume VIII electronically filed by Mr. Ken Spencer on behalf of Armstrong & Okey, Inc. and Gibson, Karen Sue Mrs.