

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

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 In the Matter of the :
 Application of The Dayton :
 Power and Light Company : Case No. 18-1875-EL-GRD
 for Approval of Its Plan :
 To Modernize Its :
 Distribution Grid. :

- - -
 In the Matter of the :
 Application of The Dayton :
 Power and Light Company : Case No. 18-1876-EL-WVR
 For Approval of a Limited :
 Waiver of Ohio Adm. :
 Code 4901:1-18-06(A) (2). :

- - -
 In the Matter of the :
 Application of The Dayton :
 Power and Light Company : Case No. 18-1877-EL-AAM
 for Approval of Certain :
 Accounting Methods. :

- - -
 In the Matter of the :
 Application of The Dayton :
 Power and Light Company :
 for Administration of the :
 Significantly Excessive : Case No. 19-1121-EL-UNC
 Earnings Test Under :
 R.C. 4928.143(F) and Ohio :
 Adm.Code 4901:1-35-10 for :
 2018. :

- - -
 In the Matter of the :
 Application of The Dayton :
 Power and Light Company :
 for a Finding That Its :
 Current Electric Security : Case No. 20-680-EL-UNC
 Plan Passes the :
 Significantly Excessive :
 Earnings Test and More :
 Favorable in the Aggregate:
 Test in R.C. 4928.143(E). :

- - -
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 PUBLIC PORTION

1 In the Matter of the :
2 Application of The Dayton :
3 Power and Light Company :
4 for Administration of the :
5 Significantly Excessive : Case No. 20-1041-EL-UNC
6 Earnings Test Under :
7 R.C. 4928.143(F) and Ohio :
8 Adm.Code 4901:1-35-10 for :
9 2019. :

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11 PROCEEDINGS

12 before Ms. Patricia Schabo and Mr. Michael Williams,
13 Attorney Examiners, at the Public Utilities
14 Commission of Ohio, via Webex, called at 10:00 a.m.
15 on Monday, January 11, 2021.

16 - - -

17 VOLUME I

18 PUBLIC PORTION

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- - -

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6 Faruki PLL
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8 Mr. D. Jeffrey Ireland
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12 On behalf of the Applicant.

13 Bruce J. Weston, Ohio Consumers' Counsel
14 By Mr. Christopher Healey
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16 Ms. Amy Botschner O'Brien
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23 The Dayton Power and Light Company.

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On behalf of the Ohio Manufacturers'
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Bricker & Eckler, LLP
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On behalf of the The Ohio Hospital
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On behalf of The Kroger Company.

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By Ms. Christine M.T. Pirik
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On behalf of Mission:data Coalition.

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On behalf of the Sierra Club.

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On behalf of the Environmental Law &
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On behalf of the Armada Power, LLC.

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On behalf of the Direct Energy, LP.

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Ms. Kara H. Herrnstein
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On behalf of the Chargepoint, Inc.

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Mr. John Jones, Section Chief
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Mr. Robert A. Eubanks
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30 East Broad Street, 16th Floor
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On behalf of the Staff of the PUCO.

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Monday Morning Session,
January 11, 2021.

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EXAMINER SCHABO: All right. The Public Utilities Commission of Ohio has assigned for hearing at this time and place the following cases which have been consolidated for the purposes of hearing: Case No. 18-1875-EL-GRD, in the Matter of the Application of The Dayton Power and Light Company for Approval of Its Plan to Modernize Its Distribution Grid; Case No. 18-1876-EL-WVR, in the Matter of the Application of The Dayton Power and Light Company for Approval of a Limited Waiver of Ohio Administrative Code 4901:1-18-06(A)(2); Case No. 18-1877-EL-AAM, in the Matter of the Application of The Dayton Power and Light Company for Approval of Certain Accounting Methods; Case No. 19-1121-EL-UNC, in the Matter of the Application of The Dayton Power and Light Company for Administration of the Significantly Excessive Earnings Test Under R.C. 4928.143(F) and Ohio Administrative Code 4901:1-35-10 for 2018; Case No. 20-680-EL-UNC, in the Matter of the Application of The Dayton Power and Light Company for a Finding that Its Current Electric Security Plan Passes the Significantly Excessive Earnings Test and More

1 Favorable in the Aggregate Test and R.C. 4928.143(E);
2 and Case No. 20-1041-EL-UNC, in the Matter of the
3 Application of The Dayton Power and Light Company for
4 Administration of the Significantly Excessive
5 Earnings Test Under R.C. 4928.143(F) and Ohio
6 Administrative Code 4901:1-35-10 for 2019.

7 My name is Patricia Schabo, and with me
8 is Michael Williams. We are the Attorney Examiners
9 assigned by the Commission to hear this case. We'll
10 begin today with appearances of counsel. Again,
11 because there are so many of us participating today,
12 I will call out the parties' names and ask that the
13 counsel then make their appearance.

14 Dayton Power and Light Company.

15 MR. SHARKEY: Yes, your Honor, Jeff
16 Sharkey of the Faruki law firm on behalf of DP&L.

17 EXAMINER SCHABO: Mr. Sharkey, will you
18 be the only one officially making an appearance this
19 morning?

20 MR. SHARKEY: No, your Honor. I assumed
21 the others will, but Jeff Ireland and Chris Hollon,
22 both of the Faruki firm, will be representing The
23 Dayton Power and Light Company; and then Mike
24 Schuler, Regulatory Counsel at DP&L, is also
25 representing DP&L in this matter.

1 EXAMINER SCHABO: Okay. Thank you.

2 On behalf of Staff of the Public

3 Utilities Commission.

4 MR. BEELEER: Thank you, your Honor. On
5 behalf of the Staff, Ohio Attorney General Dave Yost,
6 Steven Beeler, Robert Eubanks, and Thomas Lindgren,
7 Assistant Attorney Generals.

8 EXAMINER SCHABO: Thank you.

9 MR. BEELEER: Thank you.

10 EXAMINER SCHABO: On behalf of Armada
11 Power.

12 MR. ROMIG: Good morning, your Honors.
13 Drew Romig on behalf of Armada Power.

14 EXAMINER SCHABO: Thank you.

15 On behalf of Chargepoint, Inc. On behalf
16 of Chargepoint, Inc. Ms. Herrnstein, you were here
17 earlier today. Are you still here? We will come
18 back to that.

19 On behalf of the City of Dayton and Honda
20 Manufacturing of Ohio.

21 MR. LESSER: Thank you, your Honors.
22 Steven Lesser and I believe later on this week Trevor
23 Alexander, Benesch, Friedlander, Coplan & Aronoff, 41
24 South High Street, Columbus, Ohio 43215.

25 EXAMINER SCHABO: Thank you.

1 On behalf of Direct Energy.

2 MR. FIKES: Good morning, your Honor.
3 This is Lucas Fikes on behalf of Direct Energy and
4 Mark Whitt may also be appearing later in the week.

5 EXAMINER SCHABO: Thank you.

6 ELPC.

7 MR. VIJAYKAR: Good morning, your Honor,
8 Nikhil Vijaykar, that's N-I-K-H-I-L V-I-J-A-Y-K-A-R,
9 on behalf of the Environmental Law & Policy Center.
10 Also entering an appearance is Caroline Cox, also on
11 behalf of the ELPC.

12 EXAMINER SCHABO: Thank you.

13 IEU-Ohio.

14 MR. LONG: Good morning, your Honor, Todd
15 Long and Matthew Pritchard on behalf of IEU-Ohio. We
16 are with the McNeese, Wallace & Nurick firm, 21 East
17 State Street, Columbus, Ohio 43215.

18 EXAMINER SCHABO: Thank you.

19 IGS.

20 MS. ALLEN: Good morning, your Honors.
21 On behalf of Interstate Gas Supply, Bethany Allen and
22 also joining me throughout the week will be Evan
23 Betterton, Joseph Olikier, Michael Nugent, and Frank
24 Darr.

25 EXAMINER SCHABO: Thank you.

1 I am going to go back to Chargepoint.

2 MS. HERRNSTEIN: Apologies. This is Kara
3 Herrnstein on behalf of Chargepoint and I will be
4 joined later in the week by Dylan Borchers.

5 EXAMINER SCHABO: Thank you. All right.
6 And appearance of counsel for Kroger,
7 please.

8 MS. WHITFIELD: Good morning, your Honor.
9 This is Angie Whitfield from the law firm of
10 Carpenter Lipps & Leland, 280 North High Street,
11 Suite 1300, Columbus, Ohio 43215. Thank you.

12 EXAMINER SCHABO: Thank you.
13 On behalf of Mission:data.

14 MS. FLEISHER: Good morning, your Honor.
15 This is Madeline Fleisher and also entering an
16 appearance for Christine Pirik, both of Dickinson
17 Wright, 150 East Gay Street, Suite 2400, Columbus,
18 Ohio 43215.

19 EXAMINER SCHABO: Thank you.

20 NRDC.

21 MR. DOVE: Good morning, your Honor.
22 This is Robert Dove with the law firm Kegler, Brown,
23 Hill & Ritter, 65 East State Street, Suite 1800,
24 Columbus, Ohio 43215.

25 EXAMINER SCHABO: Thank you.

1 Ohio Consumers' Counsel.

2 MR. HEALEY: Good morning. On behalf of
3 the Ohio Consumers' Counsel, Christopher Healey,
4 Angela O'Brien, Ambrosia Wilson, Amy
5 Botschner-O'Brien, and William Michael. Thank you.

6 EXAMINER SCHABO: Thank you.

7 OEC.

8 MS. LEPPLA: Good morning, your Honor.
9 This is Miranda Leppla on behalf of the Ohio
10 Environmental Council, and my co-counsel Chris
11 Tavenor will also be joining us this week.

12 EXAMINER SCHABO: Thank you.

13 OEG.

14 MS. COHN: Good morning, your Honors.
15 This is Jodi Cohn with OEG, and I may be joined this
16 week by my co-counsel Kurt Boehm and Mike Kurtz.

17 EXAMINER SCHABO: Thank you.

18 OHA.

19 MR. PARRAM: Good morning, your Honor.
20 On behalf of the Ohio Hospital Association, Devin
21 Parram and Dane Stinson from the law firm of Bricker
22 and Eckler, 100 South Third Street, Columbus, Ohio
23 43215.

24 EXAMINER SCHABO: Thank you. OMAEG.

25 MS. BOJKO: Thank you, your Honor. On

1 behalf of the Ohio Manufacturers' Associates Energy
2 Group, this is Kimberly W. Bojko, Jon Wygonski with
3 the law firm of Carpenter Lipps & Leland, 280 North
4 High Street, Suite 1300, Columbus, Ohio 43215.

5 EXAMINER SCHABO: Thank you.

6 For OPAE.

7 MR. RINEBOLT: Thank you, your Honor. On
8 behalf of Ohio Partners for Affordable Energy, David
9 C. Rinebolt, Post Office Box 1793, Findlay, Ohio
10 45839.

11 EXAMINER SCHABO: Thank you.

12 On behalf of the Sierra Club.

13 MR. HALSO: Good morning, your Honor.
14 Joe Halso on behalf of the Sierra Club. Thank you.

15 EXAMINER SCHABO: For the Smart
16 Thermostat Coalition.

17 MS. FLEISHER: Your Honor, Madeline
18 Fleisher again. Also entering an appearance for
19 Christine Pirik and William Vorys on behalf of Smart
20 Thermostat.

21 EXAMINER SCHABO: Thank you.

22 University of Dayton.

23 MS. CHMIEL: Good morning, your Honor.
24 This is Stephanie Chmiel, Thompson Hine, on behalf of
25 the University of Dayton, 41 South High Street, Suite

1 1700.

2 EXAMINER SCHABO: Thank you.

3 Let's see here, before we go to ruling on
4 some pending motions, I would like to take a moment
5 to note that due to the COVID-19 emergency that
6 remains in effect pursuant to Executive Order
7 2020-01D issued by Governor DeWine in March 2020 and
8 consistent with Am. Sub. HB197 replaced by the HB404,
9 this hearing is being held by Webex which enables
10 parties to participate by video conference and for
11 members of the public to access the hearing by
12 telephone or video over the internet.

13 As I said, before we get to ruling on
14 some motions, I would like to make some preliminary
15 remarks for the record. First, if counsel or
16 witnesses experience technical difficulties during
17 the hearing, please immediately contact me and Judge
18 Williams by phone or by e-mail or contact the event
19 host by calling (614) 466-6843 or by the Webex chat
20 function. Please be aware that the chats are
21 recorded, are not private, are not part of the
22 official record in the case.

23 For those of you who may be watching or
24 listening as an attendee, including witnesses who are
25 waiting to testify, while you are observing your

1 microphones will be muted, and your videos are turned
2 off.

3 In most respects this virtual hearing
4 will proceed in much the same fashion as an in-person
5 hearing before the Commission. However, due to the
6 remote nature of the hearing, there are some new
7 basic ground rules. To avoid unnecessary background
8 noise, please keep your microphones on mute unless
9 you are speaking or will need to be able to interject
10 quickly such as when raising objections during
11 cross-examination.

12 Counsel should leave their cameras on at
13 all times except when taking a break or stepping away
14 from the hearing when co-counsel is taking the lead.
15 Remember to turn your camera back on when you do
16 return.

17 Please be mindful of the court reporter.
18 Please speak clearly, at a reasonable pace so that
19 she can accurately transcribe the record. Please do
20 your best to avoid speaking over each other by taking
21 corrective steps like intentionally allowing for a
22 pause at the end of questions, generally slowing down
23 in order to allow for connectivity lags and
24 objections. I promise we will all get better at this
25 as the week progresses.

1 During testimony witnesses should only
2 have access to those documents they would have if
3 they were physically sitting in the witness stand
4 such as exhibits previously identified and exchanged
5 by counsel. There should be no attempts to
6 communicate through any means with anyone privately
7 during their testimony.

8 Exhibits ultimately admitted into the
9 record that were not previously docketed should be
10 e-mailed by the next day to the court reporter at
11 KSpencer, S-P-E-N-C-E-R @aand, A-N-D-O.com.

12 Do counsel have any questions about these
13 comments?

14 MR. SHARKEY: Just one, your Honor. I
15 know that DP&L Witness Malinak has backup binders
16 with him. I just want to make sure him having those
17 backup binders sort of materials that I think he
18 would ordinarily take to the stand if he went to the
19 stand is acceptable.

20 EXAMINER SCHABO: Yes. If he would have
21 it on the witness stand physically in Hearing Room
22 11A, he may have it with him now.

23 MR. SHARKEY: Thank you.

24 EXAMINER SCHABO: You're welcome. All
25 right. I am going to move on to three pending

1 motions that require a ruling. First, on March 29,
2 2019, Attorney Jason Halso filed a motion to appear
3 pro hac vice on behalf of the Sierra Club. Attorney
4 Halso's motion comports with the requirements set
5 forth in Government Bar Rule VII Section 2(A)(7) and
6 is hereby granted.

7 Also on November 19, 2020, there was a
8 motion of The Dayton Power & Light Company for a
9 protective order relating to the confidential
10 information cited in the direct testimony of Matthew
11 Kahal. This motion is fully briefed with Ohio
12 Consumers' Counsel having filed a memoranda contra on
13 December 4, 2020, and DP&L having filed a reply on
14 December 11, 2020.

15 The motion for a protective order is
16 granted. We find that the Company has carried its
17 burden of demonstrating that the confidential
18 information, business information and plans,
19 financial information at issue falls under the
20 protective umbrella of trade secrets to RC
21 1333.61(D).

22 The confidential information derives
23 independent economic value for not being generally
24 known and not being generally -- not being readily
25 ascertainable by proper means. For example, if

1 disclosed, it would interfere with the Company's
2 ability to attract capital on favorable terms and
3 to -- and to negotiate the most favorable terms to
4 benefit ratepayers. It would also expose the Company
5 to increased litigation risks and decreased share
6 values.

7 DP&L has made reasonable efforts to
8 maintain its secrecy. The affidavit of Karen Nyhus,
9 N-Y-H-U-S, submitted with the motion provides factual
10 support for these findings and for the six factor
11 test set forth by the Supreme Court of Ohio in The
12 Plain Dealer case.

13 While some of the information is
14 hypothetical or projected, if disclosed the
15 information could lead in conjunction with other
16 publicly available information to ascertain numbers
17 and plans that are unquestionably trade secret
18 materials. Thus, the information remains protected.

19 Given the facts of this case, we do not
20 find that the confidential -- confidential
21 information is stale nor do we find that OCC waived
22 its ability to challenge the Company's designation of
23 the information as confidential.

24 For the motion to strike filed by OCC on
25 January 4, I will turn the lead over to Judge

1 Williams.

2 EXAMINER WILLIAMS: Thank you, Judge
3 Schabo. In considering OCC's motion of January 4,
4 2021, to strike additional testimony filed on behalf
5 of DP&L, the Attorney Examiner rules that the motion
6 is granted in part. The Attorney Examiner notes that
7 OCC raised three arguments, that the testimony as
8 filed was outside the scope of the Attorney Examiner
9 entry of December 4, that the DMR exclusion arguments
10 are precluded based on the doctrine of res judicata,
11 and that if DP&L's testimony is considered as part of
12 this case, that OCC is entitled to rebuttal
13 testimony.

14 We discussed this matter briefly off the
15 record at the prehearing conference on January -- on
16 January 5. We at that time advised that there was an
17 accelerated time for consideration of the memo in
18 opposition, and DP&L did take advantage of that
19 timeline filing opposition on January 7. We also
20 encouraged OCC to prepare rebuttal testimony with
21 anticipation of the ruling that might be given in
22 this case.

23 At this time, as I indicated, the matter
24 is considered fully briefed, and the Attorney
25 Examiner will grant OCC's motion only in regard to

1 the ability for OCC to provide rebuttal testimony.
2 In making this determination, the Attorney Examiner
3 rejects and denies OCC's request to completely strike
4 the testimony of Witness Garavaglia as well as the
5 supplemental testimony of Witness Malinak. The
6 testimony was filed consistent with the Attorney
7 Examiner's entry of December 4 and does address how
8 the SEET should be conducted -- the SEET test should
9 be conducted as part of this proceeding.

10 Moreover, we find that the FirstEnergy
11 SEET case as issued by the Supreme Court on
12 December 1 does not support the conclusion that all
13 DMR inclusion/exclusion determinations are determined
14 as a matter of res judicata for SEET determination
15 purposes.

16 Further, we find that the FirstEnergy
17 SEET case does not determine the manner in which SEET
18 calculations must be applied as in regards to DP&L's
19 case. We would note that the court did not conclude
20 that the FirstEnergy SEET case was failed. Instead
21 the court remanded that case back to the Commission
22 and instructed the Commission to determine the proper
23 threshold for measuring whether FirstEnergy had
24 significantly excessive earnings and whether any
25 adjustments under 4928.143(F) are appropriate and to

1 consider any other determinations that are necessary
2 to resolve this matter.

3 In that regard, the Commission remains
4 charged with determining whether any adjustment --
5 adjustments for capital structure might be applicable
6 in regards to DP&L's pending case. The Commission is
7 also charged with issuing -- in determining issues of
8 comparable risk. And, finally, the Commission is
9 charged with considering whether there are any
10 extraordinary items that must be considered in
11 applying the SEET case in regards to DP&L.

12 On those bases the Attorney Examiners
13 find that the additional supplemental testimony will
14 be considered as part of this proceeding, and we
15 continue to maintain and encourage OCC to consider
16 filing rebuttal testimony.

17 Attorney Healey, to put you on the spot,
18 I know we discussed informally that testimony being
19 filed by end of business today. Is OCC able to
20 comply with that directive?

21 MR. HEALEY: Yes, your Honor.

22 EXAMINER WILLIAMS: Thank you. Then we
23 will expect that to be filed by the end of today's
24 business.

25 Anything else in regard to that

1 determination of ruling on the record?

2 MR. HEALEY: Yes, your Honor, on both.
3 Just so I can confirm, your rulings today at the
4 hearing are going to be the final rulings on those;
5 there will not be a forthcoming written entry as
6 well?

7 EXAMINER WILLIAMS: That is correct.

8 EXAMINER SCHABO: Correct.

9 EXAMINER WILLIAMS: Any other items
10 relative to the motion to strike? Any other
11 preliminary items before we begin with testimony?

12 Okay. Seeing no hands feverishly being
13 waved then, Attorney Sharkey, we will invite you to
14 call your first witness.

15 MR. SHARKEY: Yes, your Honor. The
16 Dayton Power and Light Company would call Jeff
17 Malinak.

18 EXAMINER WILLIAMS: Judge Schabo, I will
19 turn it back over to you.

20 EXAMINER SCHABO: Thank you.

21 MR. SCHMIDT: Mr. Malinak, you've been
22 promoted to the role of panelist. Please enable your
23 audio and video.

24 MR. MALINAK: I believe I have done that.

25 EXAMINER SCHABO: Thank you. We will

1 begin by swearing you in. Will you raise your right
2 hand.

3 (Witness sworn.)

4 EXAMINER SCHABO: Thank you. If you
5 would state your name and business address for the
6 record.

7 THE WITNESS: My name is Robert Jeffrey
8 Malinak with Analysis Group. My business address is
9 800 17th Street Northwest, Washington, D.C., Suite
10 400, 20006.

11 EXAMINER SCHABO: Mr. Sharkey.

12 MR. SHARKEY: Thank you, your Honor.

13 - - -

14 ROBERT JEFFREY MALINAK

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

17 DIRECT EXAMINATION

18 By Mr. Sharkey:

19 Q. Mr. Malinak, do you have before you the
20 testimony that was filed on April 1, 2020, in Case
21 No. 20-680-EL-UNC captioned "Direct Testimony of R.
22 Jeffrey Malinak"?

23 A. Yes, I do.

24 Q. Okay. As of the date of that testimony,
25 was all of the information contained within it true?

1 A. Yes.

2 Q. If I asked you the same questions, would
3 you give me the same answers?

4 A. Yes.

5 MR. SHARKEY: Your Honors, we would
6 designate the confidential version of that testimony
7 to be DP&L Exhibit 1A and the public version of that
8 testimony to be DP&L Exhibit 1B.

9 EXAMINER SCHABO: So marked.

10 (EXHIBITS MARKED FOR IDENTIFICATION.)

11 MR. SHARKEY: And we would move for
12 admission of that testimony.

13 EXAMINER SCHABO: We will rule on that
14 after Mr. Malinak's been questioned.

15 MR. SHARKEY: Thank you, your Honor.

16 Q. (By Mr. Sharkey) Mr. Malinak, do you also
17 have before you the December 2020 testimony filed in
18 Case Nos. 20-1041-EL-UNC and Case No. 19-1121-EL-UNC
19 captioned "Supplemental Direct Testimony of R.
20 Jeffrey Malinak"?

21 A. I do.

22 Q. As of the date of that testimony, is all
23 of the information contained within it true?

24 A. Yes.

25 Q. If I asked you the same questions, would

1 you give me the same answers?

2 A. I would.

3 MR. SHARKEY: Your Honor, we would
4 designate that piece of testimony to be DP&L
5 Exhibit 2.

6 EXAMINER SCHABO: So marked.

7 (EXHIBIT MARKED FOR IDENTIFICATION.)

8 Q. (By Mr. Sharkey) And then, Mr. Malinak,
9 do you also have before you the December 23, 2020,
10 schedules that were filed in Case Nos. 19-1121-EL-UNC
11 and 20-1041-EL-UNC?

12 A. I do.

13 MR. SHARKEY: And, your Honor, we would
14 designate those schedules to be DP&L Exhibit 3.

15 EXAMINER SCHABO: So marked.

16 (EXHIBIT MARKED FOR IDENTIFICATION.)

17 MR. SHARKEY: And before I conclude, your
18 Honor, we would also designate the Stipulation and
19 Recommendation filed in the consolidated cases, I
20 won't read all of the numbers off, but we would
21 designate that Stipulation to be Stipulating Parties
22 Exhibit 1, and we'll hold off for motion to admit
23 that testimony until after Ms. Schroder testifies.

24 I do believe I neglected to move for the
25 admission of DP&L Exhibits 2 and 3, but I will make

1 that motion now.

2 EXAMINER SCHABO: Again, we will wait for
3 a ruling on the admission after questioning. And we
4 will mark as Stipulating Parties Exhibit 1 the Joint
5 Stipulation filed in the six cases on October 23,
6 2020.

7 (EXHIBIT MARKED FOR IDENTIFICATION.)

8 MR. SHARKEY: Thank you, your Honor. I
9 have no further questions for Mr. Malinak. He is
10 available for cross-examination.

11 EXAMINER SCHABO: I will first briefly
12 open the floor for -- well, let me say it this way, I
13 know that the Ohio Consumers' Counsel has
14 cross-examination for this witness. If any other
15 counsel has cross-examination for this witness,
16 please -- please let me know by unmuting your
17 microphone and speaking now.

18 Hearing none, Mr. Healey --

19 MR. HEALEY: Thank you, your Honor.

20 EXAMINER SCHABO: -- would you like to
21 cross?

22 MR. HEALEY: Yes, thank you.

23 - - -

24

25

1 CROSS-EXAMINATION

2 By Mr. Healey:

3 Q. Mr. Malinak, you believe that a company's
4 credit ratings can be used as a measure of its
5 financial integrity, correct?6 A. I would say that credit ratings are one
7 indicator of its -- of its financial integrity and
8 condition generally.9 Q. And you would agree that when a company's
10 credit ratings improve, you would say that, all else
11 equal, its financial integrity has improved, correct?12 A. I think, yeah, holding all else equal, a
13 higher credit rating means, you know, lower risk
14 and -- and, you know, more financial wherewithal for
15 sure.16 Q. And if the PUCO were to terminate the
17 rate stabilization charge, or RSC, you believe that
18 would negatively impact DP&L's credit ratings,
19 correct?

20 A. Yes, I do.

21 Q. And so you would also then agree that if
22 the RSC continues, that's good for DP&L's financial
23 integrity, correct?24 A. I would say that it is -- if the RSC
25 continues versus not continuing, their -- their

1 financial integrity will be improved, yes.

2 Q. And so one of the reasons that you think
3 that the RSC should continue is so that DP&L can
4 maintain investment grade credit ratings, correct?

5 A. Well, I mean, there's several reasons for
6 the RSC that are spelled out in my testimony. One of
7 them is -- is compensation for POLR risk and the
8 costs of being provider of last resort, both the risk
9 and the actual cost. And then also RSC is -- is
10 also -- does provide additional financial resources
11 that -- that will help DP&L to be able to do its
12 capital investment plan and also do grid
13 modernization which enhances reliability and safety
14 for its customers. So there are certain multiple
15 things that the RSC serves.

16 Q. Right. My point is one of those things,
17 among others, is to assist DP&L in maintaining
18 investment grade credit ratings, correct?

19 A. Or -- or just below. I mean, think S&P
20 has them just below, but they are sort of on the
21 edge. But one of the reasons is for -- one of the --
22 one of the effects of the RSC is to keep their credit
23 rating from falling.

24 Q. So is it your opinion then that whenever
25 an Ohio company's credit ratings are falling or at

1 risk of falling, the government should give them
2 money to help maintain or improve their credit
3 ratings?

4 A. No. It would depend on the situation
5 that each utility found itself in. I think that if a
6 utility in Ohio's credit ratings are starting to fall
7 below investment grade, I think it's beneficial to
8 customers, you know, for rates to include an increase
9 that would -- would help the utility to maintain that
10 credit rating and that follows from, you know, the
11 regulatory model in which the -- if it works
12 properly, the goal is to -- you know, for the company
13 to recover its cost of capital, and so for customers
14 if -- if the Company is in a position where it -- and
15 usually that means an investment grade credit rating.
16 Or not just usually. That's pretty typical. Then
17 that's where the cost of capital is minimized and
18 that's where customers are going to be best off.

19 So -- so in answer to your question, I
20 think there is an argument, a good one, for in
21 most -- in many cases for the rates to include a
22 charge that would keep a company from falling into
23 financial distress.

24 Q. What about nonutilities, other companies
25 that have credit ratings that are falling or at risk

1 of falling? Should the government give them money to
2 maintain their credit ratings as well?

3 A. Of course not because they are not
4 regulated. They are not part -- it's not the
5 regulatory compact with unregulated companies.

6 Q. Okay. So any regulated company would be
7 potentially eligible for a financial integrity
8 charge, but nonregulated companies would not; is that
9 correct?

10 A. Yeah. Just to be clear, the RSC is --
11 you know, serves multiple purposes as I discussed
12 earlier. You used the term financial integrity
13 charge, but if a company is subject to rate of return
14 regulation and also regulation regarding what amounts
15 go into rate base and so forth, then they are part of
16 that regulatory compact, and it behoove regulators
17 to -- in my opinion to, you know, assess whether its
18 reasonable to include in rates a charge that will
19 ultimately benefit the customer -- customers.

20 Q. If that's the case, then why -- why do we
21 bother with cost of service regulation? Why don't we
22 just say here is the amount every utility company
23 needs for adequate credit ratings and have that be
24 the sole metric?

25 A. Well, because there has to be prudence

1 review of investment to see -- to be sure that it did
2 make sense to go into rate base and there also has to
3 be rate of return regulation. As I said earlier, if
4 the regulatory model works properly, then the company
5 will earn in the long run no more than its cost of
6 capital and that's beneficial to customers.

7 If you -- if you have a financially
8 strong utility with a sort of minimized cost of
9 capital, that's just a straight passthrough. Then
10 that -- that's what will ultimately benefit the
11 customers the most. The investors will just earn
12 their rate of return commensurate with the risk
13 they're taking. So, of course, there has to be
14 regulation of both level of investment and the rate
15 of return.

16 Q. You mentioned prudence. What if it is a
17 utility's imprudent decisions that are driving the
18 concern about credit ratings? Would it be the PUCO's
19 job in that instance to make up for those imprudent
20 decisions and provide them with a charge that helps
21 improve their credit ratings?

22 A. Well, I am having a little bit of a
23 problem with the hypothetical because the Company is
24 subject to prudency review in sort of real time where
25 it makes sense. So I am having a little bit of

1 trouble understanding, you know, how I think -- I
2 guess in hindsight it would be possible to decide
3 that a decision was imprudent, but I object to that
4 generally because decisions are made in real time
5 based on what's known and knowable at the time of the
6 decisions so. So I guess I am having a problem with
7 the hypothetical in a regulated setting.

8 Q. Sure. Are you saying that there's no
9 conceivable way that a utility could make an
10 imprudent decision and the result of that decision
11 would be to have a negative impact on its credit
12 ratings?

13 A. What I am saying is that the utility --
14 you could find out. People can decide ex-post
15 something was imprudent, but at the time of the
16 decision, which is when prudence reviews should be
17 evaluated, I'm saying that regulators would have
18 looked at that decision, and so it would have been
19 a -- an Opinion and Order or a decision at the time
20 for the regulators and the company both agreed that
21 based on what they knew at the time, that the
22 decision was prudent.

23 Q. Are you suggesting that PUCO reviews all
24 of DP&L's decisions regarding prudence in real time?

25 A. You know, I am not familiar with, you

1 know, all of the decisions. I mean, certainly
2 day-to-day decisions about, you know, O&M and if
3 there is an emergency and that kind of thing, not
4 everything can be reviewed, but major decisions I
5 think would -- I would be surprised if they weren't
6 subject to regulatory scrutiny.

7 Q. Are you familiar with the used and useful
8 standard?

9 A. I am generally, yes.

10 Q. And can you tell me what you understand
11 that to be?

12 A. Yeah. It's -- you know, you want -- you
13 would like generally in a regulatory setting for --
14 for customers to only pay for assets that are deemed
15 to be, you know, used and useful, you know,
16 determined at the time the investment is -- is --
17 that the investment decision is being made. So
18 that's -- that's -- you don't have -- you don't have
19 assets that are effectively invested in and then
20 not -- you know, not used, you know, and so they --
21 customers end up paying for assets that are not used
22 and useful.

23 Q. Do you understand the concept of a date
24 certain in a base rate case?

25 A. I mean, if -- I have heard different

1 terms used like test years and that kind of thing;
2 but if it's what I think it is, it would be, you
3 know, you need to have a -- a date by which you set
4 up -- you have a test year or something that you
5 set -- that you use to base rates on. You may be
6 referring to something different.

7 Q. Well, the term used -- the term date
8 certain is a term of art in Ohio, so is your
9 testimony that you are not sure what it means in
10 Ohio?

11 A. I don't remember that term specifically
12 for Ohio.

13 Q. And do you know whether a date certain
14 and a test year are the same or different?

15 A. I don't as I sit here.

16 Q. Mr. Malinak, I understand from a
17 representation from your counsel, I don't remember if
18 it was on the record or off, that you have some
19 binders with you today for purposes of your
20 testimony; is that correct?

21 A. I do. I have several massive binders.

22 Q. And do those binders contain anything
23 that was not either attached to your testimony or
24 filed on the docket in this case?

25 A. Yeah. They have -- they have all the

1 documents that are -- that are referenced in my
2 testimony so like they are organized by footnote so
3 it's -- it's expensive if they were attached, but I
4 didn't -- they are just footnotes in my testimony,
5 but the documents are here.

6 Q. Anything else other than documents that
7 you referenced in footnotes in your testimony?

8 A. Yeah. I mean, I have some copies of
9 Mr. Kahal's testimony, Mr. Garavaglia's testimony,
10 Mr. Buckley's testimony, just clean copies of those
11 things. I also have a copy of my testimony from 2017
12 so that is -- and then I have those exhibits that we
13 talked about earlier, my testimony of these matters.

14 Q. Thank you.

15 MR. HEALEY: Your Honor, I would ask just
16 as a courtesy since we are remote that if the witness
17 decides to rely on any of those documents in
18 responding to any of my questions, he identify which
19 documents he is looking at since I won't be able to
20 tell since we are not in the room; is that
21 acceptable?

22 EXAMINER SCHABO: Very much so.

23 Mr. Malinak, if you are referencing any
24 of the documents in your binder in answering a
25 question, it would be appropriate for you to let

1 everyone know that.

2 THE WITNESS: I will do so, your Honor.

3 Q. (By Mr. Healey) Thank you. Are you
4 testifying as an expert witness today?

5 A. Yes.

6 Q. And you are not an attorney, correct?

7 A. That is correct.

8 Q. And you've never been an attorney; is
9 that correct?

10 A. That is also correct.

11 Q. So it's accurate to say you are not
12 rendering any legal opinions in these cases through
13 your testimony, correct?

14 A. Yes.

15 Q. And you are not testifying in support of
16 the stipulation, correct?

17 A. Yes, that's -- that's correct.

18 Q. And you are aware that a Stipulation has
19 been filed however, correct?

20 A. I am.

21 Q. And did you review that Stipulation
22 before filing your testimony?

23 A. I did not.

24 Q. Have you reviewed it at all?

25 A. I have not.

1 Q. So not having reviewed this, you would
2 have no opinion on whether it passes the PUCO's
3 three-part test for settlements, correct?

4 A. You know, I've seen reference to the
5 three-part settlement, but I don't remember the
6 components of it, but to the extent that -- yeah, I
7 guess that's -- the answer to your question is yes.

8 Q. And you filed two pieces of testimony in
9 these cases, correct?

10 A. Yes, the ones that we are here for today,
11 yes.

12 Q. Right. And the April 2020 testimony
13 which has been marked Exhibits 1A and 1B, that was
14 filed back in April of this year; is that right?

15 A. Yes, it was.

16 Q. Sorry. April of last year, I apologize.

17 A. Yes, April 2020.

18 Q. And you are aware that one of the
19 questions in that Case No. 20-680 is whether DP&L's
20 ESP I, Electric Security Plan I, continues to be more
21 favorable in the aggregate than a Market Rate Offer,
22 correct?

23 A. Yes, that's -- that was one of the topics
24 of my testimony.

25 Q. And if I refer to that as the MFA test,

1 you will understand I am referring to the more
2 favorable in the aggregate test in that case,
3 correct?

4 A. Yes, yes.

5 Q. And, likewise, another issue in that case
6 that you address is whether DP&L is expected to have
7 significantly excessive earnings as a result of
8 continuing ESP I, correct?

9 A. Correct.

10 Q. And we sometimes refer to that as the
11 prospective SEET, S-E-E-T, test; is that right?

12 A. Yes.

13 Q. You -- you also filed testimony more
14 recently in December 2020, correct?

15 A. Yes.

16 Q. And in that testimony, you address your
17 opinion as to whether DP&L had significantly
18 excessive earnings in 2018 and 2019, correct?

19 A. Yes, as the exercise is defined and
20 covered by -- by this SEET statute and then by other
21 Commission guidance.

22 Q. And if I refer to those cases as the
23 retrospective SEET cases, you'll know I am referring
24 to Case 19-1121 and 10-1041, correct?

25 A. Yes.

1 Q. Are you aware that this case also
2 involves a proposal for grid modernization?

3 A. Yes. By this case I think you mean my
4 April 2020 testimony which has -- my understanding is
5 grid modernization is included in that, yes.

6 Q. Are you aware that there is grid
7 modernization included in the settlement in this
8 case?

9 A. I guess I'm generally aware of that. I
10 mean, I haven't read the Stipulation as we talked
11 about before but that's my general understanding.

12 Q. So to the extent the Stipulation makes
13 recommendations on things that DP&L should or should
14 not do with respect to grid modernization, you are
15 not rendering any opinion on that, correct?

16 A. I mean, not specifically. I mean, my
17 testimony from April 2020 which had a grid mod plan
18 in it, you know, has implications for grid
19 modernization and the costs to develop it so, I mean,
20 there is sort of an indirect nexus there.

21 Q. You are not taking any position on --
22 well, let me take a step back.

23 Are you aware of the something called the
24 infrastructure replacement rider?

25 A. You know, I thought it was something like

1 Infrastructure Investment Rider but something called
2 the IIR that I am aware of. But you just said
3 Infrastructure Replacement Rider.

4 Q. Yeah. I think --

5 A. I don't recall that specifically. It
6 might be one of the riders that's in my testimony,
7 but I don't recall that one specifically.

8 Q. I apologize. I misspoke. I did mean
9 Infrastructure Investment Rider. Are you familiar
10 with the Infrastructure Investment Rider?

11 A. I mean, I am -- I am familiar with it in
12 its general, you know, provisions and nature.

13 Q. But you don't know what recommendations
14 are made in the Stipulation regarding the IIR,
15 correct?

16 A. Not specifically, no.

17 Q. And you are not taking any position on
18 whether any grid modernization proposals in the
19 Stipulation will be cost effective, correct?

20 A. Yes. Not in the Stipulation except to
21 the extent that -- that, you know, in the past I've
22 evaluated the grid modernization plans of DP&L, and I
23 did quite a bit of research on the value of grid
24 modernization. And it -- there are a lot of benefits
25 provided by it, but other than that, what's in the

1 Stipulation, I don't -- I haven't done a cost
2 effectiveness analysis of that.

3 Q. Have you reviewed DP&L Witness Schroder's
4 testimony in support of the Stipulation?

5 A. Not that I recall.

6 Q. And so not having recalled reviewing it,
7 you wouldn't be in a position to support or refute
8 anything she says in her testimony, correct?

9 A. Not as I sit here today. The only reason
10 I say not that I recall is I have got these huge
11 binders. There's a possibility it's in there. I
12 don't think it is but. Yeah. I don't recall seeing
13 that.

14 Q. You've testified at least written
15 testimony or upon cross-examination before the PUCO
16 previously, correct?

17 A. Yes.

18 Q. And in each of those cases it was on
19 behalf of DP&L?

20 A. Yes.

21 Q. So you've not testified or filed written
22 testimony in Ohio for any party other than DP&L,
23 correct?

24 A. I personally have not. It's possible
25 that in my prior life I had a matter or two in Ohio

1 but that would be it.

2 Q. Can you explain to me what you mean by
3 "prior life"?

4 A. Well, I spent the first -- a large
5 portion of my career at a firm called Putnam, Hayes &
6 Bartlett. They did a lot of energy and environmental
7 work, and so I was involved in rate cases, valuing
8 power plants and coal contracts, and I think in
9 almost every state in the union at one time or
10 another. And so I didn't want to rule out that
11 possibility that I supported an expert, not me
12 personally but another expert in Ohio.

13 Q. Understood. Thank you. I would like to
14 focus for the time being on your April 2020 testimony
15 in case 2680. And I will -- I will let you know if
16 it looks like we are going to get into anything
17 confidential so you can use your public version for
18 now if you prefer, or you can just take care not to
19 reveal any confidential information.

20 A. All I have is the confidential.

21 Q. That's fine. Then I leave it to you to
22 not reveal confidential information. In your
23 April 2020 testimony, you provided some financial
24 projections for a four-year period from 2020 to 2023,
25 correct?

1 A. Yes.

2 Q. And during that period, you projected
3 about \$314 million in payments to DP&L under the RSC,
4 correct?

5 A. I think that number sounds right,
6 approximately. I just wanted to look for -- it's
7 probably in here somewhere. I'll take your
8 representation for now.

9 Q. Sure. I can give you a page reference if
10 you want to check for yourself.

11 A. Okay.

12 Q. It's on page --

13 A. Yeah, I got. It's 12.

14 Q. Okay. Very good. And --

15 EXAMINER SCHABO: Sorry, Mr. Healey. If
16 you could still give us a page number, that would be
17 tremendously helpful.

18 MR. HEALEY: Sure. I believe the witness
19 said it was on page 12.

20 A. That's one place it is. It's probably in
21 multiple places but if you look at line 14.

22 Q. Sorry. Go ahead. I was just going to
23 say I think maybe the better reference is on page 57
24 where there is a table showing the year-by-year
25 amounts, Table 5.

1 EXAMINER SCHABO: Thank you.

2 Q. And I believe you say elsewhere that --
3 and this is just the math, it's about 79 million a
4 year, correct?

5 A. Yeah. It ranges from 77 to about 79.7,
6 averaging around 79, yeah.

7 Q. And I think we discussed this a little
8 bit before, but your testimony from April is that,
9 along with other things, the \$79 million in annual
10 RSC payments will allow DP&L to maintain stable
11 investment grade credit ratings, correct?

12 A. Now, this is a question for the group, I
13 guess, is that, you know, a lot of the specific
14 credit rating information, my projected credit rating
15 information, is boxed in, you know, red boxes; so am
16 I allowed to answer this question?

17 Q. I am not asking -- I am not asking to
18 reveal any specific credit ratings. I just want a
19 quantitative assessment whether you think that the
20 RSC will support DP&L's maintenance of stable
21 investment grade credit ratings.

22 MR. SHARKEY: I have no objection to him
23 answering that question, your Honor.

24 EXAMINER SCHABO: I'm sorry. What was
25 your objection, Mr. Sharkey?

1 MR. SHARKEY: No. I was noting DP&L has
2 no objection to him answering that question even
3 though it does touch on some information that's
4 designated confidential as long as he doesn't reveal
5 specific credit ratings that he projects.

6 EXAMINER SCHABO: Okay. Thank you.

7 A. Okay. So, yeah, DP&L, you know, I do
8 project that they will maintain investment grade
9 ratings if they are allowed an RSC at the 79 million.

10 Q. Did you assess --

11 A. Sorry, at the 79 million.

12 Q. Did you assess whether DP&L would be able
13 to maintain investor grade credit ratings with an RSC
14 any lower than 79 million per year?

15 A. I also made an assessment when -- or
16 under the assumption that the RSC is 0.

17 Q. And what did you conclude with the RSC
18 was zero?

19 A. Well, I want to just check my actual
20 results. The financial condition and integrity of
21 DP&L, you know, would decline materially and what I
22 was checking for is to see what the debt ratings fall
23 to. Although I guess I can't say what they would
24 fall to, right?

25 MR. SHARKEY: DP&L has no objection to

1 him describing generally whether they fall above or
2 below investor grade credit ratings but would ask for
3 any specific credit ratings to be discussed in the
4 confidential record.

5 A. So, you know --

6 EXAMINER SCHABO: Mr. Malinak, sorry. If
7 you could do me a favor and bring your binder so that
8 you are facing your microphone. When you testify, it
9 makes it much easier to hear you.

10 THE WITNESS: Okay. I'm sorry.

11 EXAMINER SCHABO: That's okay.

12 THE WITNESS: We set this up as best we
13 can for virtual testimony. We have to kind of
14 spread, spread things out.

15 EXAMINER SCHABO: I understand.

16 A. Okay. So, yeah. So I -- based on --
17 based on my analysis without the RSC, they would --
18 DP&L would fall to one notch below investment grade.

19 Q. And --

20 A. I hope that wasn't too specific.

21 Q. My next question then is did you assess
22 the potential for DP&L's credit ratings with any RSC
23 amount other than 0 and 79 million?

24 A. I did not.

25 Q. So, for example, if for some reason the

1 RSC were 70 million instead, you didn't do any
2 assessment of how DP&L's credit ratings would fair,
3 correct?

4 A. Yeah, not specifically. I mean, you
5 know, the 79 million leaves them right at what one
6 might call the ragged edge, or someone at one point
7 called a ragged edge of investment grade. So in a
8 sense it's kind of a minimum number for the RSC so
9 really didn't -- I wasn't asked to do one below 79
10 but there is -- also it doesn't make sense for me to
11 do one.

12 Q. Just to confirm, you, in fact, did not do
13 any assessment of a lower RSC other than zero,
14 correct?

15 A. That's correct.

16 Q. Now, you've testified that if DP&L were
17 to file a request for a Market Rate Offer instead,
18 you believe that the PUCO would approve a financial
19 integrity charge that is greater than the 79 million
20 per year, correct?

21 A. Well, I don't -- I don't think of it
22 exactly that way but that -- I made an assessment
23 that that is a reasonable assumption to make that
24 the -- that -- and it's based on the fact I wanted to
25 make the cash flows in that scenario the same, cash

1 inflows from outside the same -- or from, you know,
2 the RSC and that and also from other sources to be
3 the same between the two scenarios. And so it would
4 make sense it would be reasonable for the PUCO to
5 approve FIC of that -- at that level. But, of
6 course, that is the analytic assumption that's
7 designed to help me make my more favorable in the
8 aggregation analysis.

9 Q. So you're not trying -- you're not trying
10 to predict what the PUCO would actually do in an MRO
11 case, correct?

12 A. Yeah. I mean, I think that's a decent
13 way to put it because, you know, they could approve
14 one a little lower, a little le -- a little higher, a
15 little less. I would recommend, you know, if I were
16 retained, you know, I would recommend that they put
17 in an FIC [REDACTED] or even higher at [REDACTED] as
18 I testified and put elsewhere in my testimony. But
19 you never know exactly what they are going -- what
20 they would decide. I think it would be reasonable,
21 reasonable -- it's a reasonable assumption for
22 quantifying the different scenarios for what a more
23 favorable in the aggregate would be.

24 MR. SHARKEY: Your Honor, I think
25 Mr. Malinak just inadvertently disclosed some

1 confidential information regarding the amount of the
2 FIC under an MRO. I would move that information be
3 included in the confidential transcript and struck --
4 stricken from the transcript here on the public
5 record.

6 MR. HEALEY: Your Honor, I would oppose
7 that request. It's Mr. Sharkey and Mr. Malinak's
8 obligation to determine what they should and should
9 not say at the hearing. And Mr. Malinak by revealing
10 that information currently in a public hearing to
11 individuals who have not signed a protective
12 agreement with DP&L, we can't just erase that and
13 pretend it didn't happen. There are people now who
14 know that information. There are members of the
15 public. There are public participants to this
16 proceeding who clearly have not been privy to
17 confidential information. And I think he's,
18 therefore, waived just those two pieces of
19 information, the two numbers he just stated, and I
20 certainly would not claim that he waived all his
21 calculations to arrive at those numbers but honestly
22 that's -- that's on him.

23 EXAMINER SCHABO: Let's call this a
24 learning experience. We will take that out of the
25 public transcript. I ask Mr. Malinak to not reveal

1 that again but this is your warning. If another
2 piece of confidential information is inadvertently
3 disclosed, I will be more inclined to leave it in the
4 public record.

5 THE WITNESS: I apologize, your Honor.

6 Q. (By Mr. Healey) Mr. Malinak, you are
7 aware that the Distribution Modernization Rider for
8 DP&L was approved in the amount of 105 million per
9 year, correct?

10 A. Yes.

11 MR. HEALEY: I would ask DP&L's counsel
12 at this time whether we can say that the range of the
13 FIC is higher or lower than the DMR without revealing
14 those numbers on the public record?

15 MR. SHARKEY: Yes, you can.

16 Q. (By Mr. Healey) Mr. Malinak, you
17 understand that your hypothetical range for the
18 financial integrity charge in the MRO is greater than
19 the \$105 million DMR, correct?

20 THE WITNESS: I'm sorry. Am I allowed to
21 say that, answer that question? Because this relates
22 to what we were just talking about, right?

23 MR. SHARKEY: DP&L has no objection, your
24 Honor, to Mr. Malinak answering whether his projected
25 FIC amounts are greater or less than the

1 \$105 million.

2 EXAMINER SCHABO: Is that -- do you
3 understand, Mr. Malinak?

4 THE WITNESS: Oh, I was -- I was waiting
5 for someone to say I can answer.

6 A. Yes, yes. I project higher than -- the
7 FICs are higher than 105 million.

8 Q. So I guess my -- my follow-up to that is
9 if -- if you think and would recommend that the PUCO
10 approve a financial integrity charge in an MRO case
11 that's greater than even the \$105 million DMR, why
12 haven't we seen DP&L file an MRO case so it can start
13 getting this very large financial integrity charge?

14 MR. SHARKEY: Objection, your Honor.
15 Mr. Malinak can't speak to DP&L's strategy or why he
16 would or would not be filing those cases.

17 EXAMINER SCHABO: The objection is
18 sustained. Mr. Malinak has testified that he is not
19 providing legal opinions.

20 Q. (By Mr. Healey) Let's move now to your
21 December 23 testimony in the retrospective SEET
22 cases, please.

23 A. Okay.

24 Q. Now, generally speaking you and DP&L
25 Witness Garavaglia have created five different

1 scenarios for the SEET for each of 2018 and 2019,
2 correct?

3 A. We analyze five scenarios, that's
4 correct.

5 Q. Can you turn to page 47 of your
6 December 2020 testimony, please.

7 A. Yes, I am there.

8 Q. And on page 47 that's where you start
9 describing the five scenarios, correct?

10 A. Yeah, in the body of the testimony. I
11 think I also described them in my summary, of my
12 executive summary at the front.

13 Q. Sure. And since there are 5 for each of
14 2018 and 2019, there are 10 in total, correct?

15 A. There are -- there are, you know, 10
16 different ROE calculations and, you know, for -- one
17 for each scenario and one for each year, and then I
18 also have threshold calculations that go along with
19 those.

20 Q. Sure. I just wanted to make sure I
21 understand that the five scenarios for 2018 and the
22 five for 2019, those are represented in the Schedules
23 1 through 10 that were filed separately, correct?

24 A. Yeah. If you look at page 50, there is a
25 Table 6 that summarizes the 10 different ROEs.

1 Q. Right. And in those schedules that were
2 filed separately and marked as DP&L Exhibit 3, Nos. 1
3 through 5 are for 2018, correct?

4 A. Yes. I have got doubled-sided copies, so
5 I am just trying to keep things sorted out but, yes,
6 2018 goes up through Schedule 5.

7 Q. And I think, as you just said, for each
8 of those Scenarios 1 through 5 for 2018, you
9 calculated -- you and Mr. Garavaglia together
10 calculated a different return on equity, correct?

11 A. Yeah. The ROEs are different for each
12 scenario because of the assumptions that go in.

13 Q. Sure. Are you -- I don't know that this
14 was clear from your testimony, are you asking the
15 PUCO to adopt a specific one of these 1 through 5 for
16 2018?

17 A. I have an opinion, you know, as an
18 economic expert as to the approach that kind of makes
19 the most sense from an economic or financial point of
20 view if you are given the -- given the SEET statute
21 and the -- and the initial guidance on the SEET and
22 if I -- if you ask me which one kind of makes the
23 most sense to me given, you know, economic sense,
24 given those things, and my analysis and everything
25 else in my testimony, I would say that I -- it would

1 be Scenario 1 would make the most economic sense, but
2 I understand the Commission obviously has, you know,
3 our -- other things that it has to consider, other,
4 you know, factors, legal factors that, of course, as
5 we established earlier, I am not a legal expert, so I
6 can't offer an opinion on that. But economically the
7 all adjustment scenario kind of makes sense given
8 sort of the economics of the SEET.

9 Q. You are not testifying then that you
10 think Scenario 1 is necessarily consistent with the
11 Ohio law since you are not a lawyer, right?

12 A. Yeah, I am not a lawyer, although what I
13 can say is, you know, I can interpret the words in
14 the statute and the guidance. They use economic
15 words and they -- they use capital structure and they
16 use finance. They use, you know, earnings, okay?
17 And earnings has a very specific definition in
18 economics and finance. They use accounting language
19 too and I am a user of accounting information and so
20 those are -- those the things that I can -- that I
21 can offer an opinion about, and they do exist in --
22 in words in the statute and in the Commission
23 guidance.

24 Q. Did you review other Ohio statutes to
25 determine whether your interpretation of those words

1 is consistent with other Ohio statutes?

2 A. Gosh, you know, I have looked at a number
3 of Ohio statutes over the years, but I can't -- but I
4 can't specific -- I did not look specifically in this
5 matter at any other statutes in order to establish
6 that because those words have, you know, definite
7 meaning to -- to financial economists.

8 Q. Sure. But you don't know whether the
9 Ohio General Assembly used those words in the same
10 way a financial economist would, correct?

11 A. Yeah. That's something I can't offer an
12 opinion on.

13 Q. Right, because you are not -- you are not
14 a part of the Ohio legislature and weren't involved
15 in passing those laws, correct?

16 A. Yeah, and I didn't review anything, any
17 language where they -- you know, any of their
18 writings or orders or opinions that might have
19 addressed the topic.

20 Q. I would like to ask a couple questions
21 just generally to understand how a return on equity
22 is calculated. Would you agree that for purposes of
23 this case in its most basic form the return on equity
24 is the earnings divided by the common equity?

25 A. That's -- that's hard for me to agree

1 with because return on equity, you know, has -- it
2 has a very specific sort of definition in financial
3 economics. The one you just described is a method
4 that is often -- that is what -- one of the worst
5 ways from a financial economic point just because of
6 the -- of the year-to-year variations that can occur
7 and also the fact that equity is an accounting
8 number, okay? So what I am objecting to is just your
9 use of the term would not agree that this is the most
10 basic form. I actually would say the most basic form
11 would -- would use the market value of equity, not
12 the book value.

13 Q. Okay. Maybe we can walk through one of
14 your schedules to get on the same page. Can you turn
15 to Schedule 1 that was marked as part of Exhibit No.
16 3.

17 A. I am looking at 1A.

18 Q. You said 1A. I am not sure what you are
19 referring to. I understand that there are schedules
20 that were filed on the 23rd.

21 A. Oh, I'm sorry. I'm sorry. You said the
22 schedules. Okay.

23 Q. Yes, yes, the schedules. And I would
24 like to look at Schedule 1.

25 A. Yes. I am there.

1 Q. Okay. Now, on this Schedule 1 which -- I
2 guess just foundational, at the top it says
3 "Witnesses Responsible: Garavaglia and Malinak,"
4 correct?

5 A. Yes.

6 Q. So you are familiar with this schedule
7 and participated in creating it, correct?

8 A. I actually did not participate in
9 correct -- in creating it, but I did review it.

10 Q. Now, line 23 says "Return on Equity-Base
11 with Adjustment," correct?

12 A. Yes.

13 Q. And it shows a 0.7 percent, correct?

14 A. Yes, it does.

15 Q. And that's -- that is your recommendation
16 in Schedule 1, that if these adjustments were made,
17 the ROE for purposes of the SEET would be
18 0.7 percent, correct?

19 A. For 2018, I think, yes.

20 Q. Right. Now, next to that 0.7 percent, it
21 says "Line 12 divided by line 22." Do you see that?

22 A. Yeah. I think -- believe it or not I
23 think is a typo, I think. I think it should say
24 "line 11."

25 Q. Right. That was my next question. So it

1 should be "Line 11 divided by line 22," correct?

2 A. Yes. I actually corrected that, believe
3 it or not, when I was reviewing this.

4 Q. And so to arrive at that .07 percent, you
5 took line 11, "Adjusted Earnings for Common," and
6 then divided that by line 22, "Adjusted Common
7 Equity," correct?

8 A. Yes, \$11.8 million divided 1.7 billion.

9 Q. Correct. So for purposes of this
10 schedule, at least, we understand the calculation of
11 return on equity to be adjusted earnings for common
12 divided by adjusted common equity, correct?

13 A. Yeah. This is -- this is calculations --
14 one way to calculate return on equity, yes.

15 Q. And it's the -- it's the calculation of
16 return on equity that you are sponsoring for purposes
17 of this case, correct?

18 A. It's one of them. I mean, I think I am
19 sponsoring several scenarios but this is -- this is
20 the first one.

21 Q. Sure. And do any of those scenarios not
22 involve taking adjusted earnings for common and
23 dividing it by adjusted common equity?

24 A. I mean, no. They all -- they all are the
25 just different measures of those two -- that

1 numerator and that denominator.

2 Q. Right. So these are not your questions.
3 I am just understanding the math behind each of these
4 schedules. It's the same in each one. Adjusted
5 earnings for common is the numerator and adjusted
6 common equity is the denominator, correct?

7 A. Yes.

8 Q. Okay. So again, just pure math, any
9 adjustment that you make to decrease the adjusted
10 earnings for common would lower the ROE, correct?

11 A. Assuming that that adjustment did not
12 have a balance sheet implication because a lot of
13 times like if you subtract out a -- or add back a
14 writeoff, you have to also adjust the equity. So I
15 couldn't answer that. It would depend on the type of
16 adjustment that you are referring to.

17 Q. Okay. Fair. Let's look at a specific
18 one then. The Schedule 1, "Distribution
19 Modernization Revenues," line 3, do you see that in
20 the Schedule 1?

21 A. I do.

22 Q. And there is a reduction to the earnings
23 of about 82 -- 2.6 million, correct?

24 A. Right.

25 Q. Does that adjustment have a corresponding

1 adjustment to the common equity?

2 A. I think for purposes of this -- this
3 calculation that -- that there was not an adjustment
4 made for this -- for that particular subtraction
5 because it has to do with the way the rules -- the
6 way the SEET is calculated so, you know, all of these
7 ROEs, by the way, are ROEs that are being calculated
8 for SEET purposes. And so, you know, I don't think
9 we made an explicit adjustment for that, and it was
10 because of the way the SEET is calculated.

11 Q. Now, you said for SEET purposes. These
12 would not be used for tax purposes, correct?

13 A. You know, I do a fair amount of tax work,
14 and I don't know that I have ever been asked to
15 calculate an ROE. You are usually calculating
16 taxable income, so I can't answer that.

17 Q. Okay. Now, we just discussed that
18 removing the distribution modernization revenues from
19 the adjusted earnings for common does not have any
20 corresponding impact on the second part of the
21 calculation, the adjusted common equity, correct?

22 A. That's my belief, yes.

23 Q. And so, therefore, by lowering the
24 adjusted earnings for common by removing the
25 distribution modernization revenues, that has the

1 effect of lowering the ROE, correct?

2 A. Yes, it does, that particular adjustment.
3 You will notice, by the way, that -- from this
4 schedule that some of the other adjustments that you
5 see did have an impact. The 9.7 million and
6 1.7 million, if you look down there, the 288,000, et
7 cetera, those were all, you know, adjusted. They
8 adjusted that.

9 Q. Right. The adjustment we just discussed,
10 the \$82.6 million reduction to earnings, DP&L had
11 already made that adjustment when it filed the 2018
12 SEET case, correct?

13 A. I have not actually -- maybe a long time
14 I saw what they filed, but my understanding is they
15 did remove the DMR, my general understanding. I
16 don't remember reading the filing but that's my
17 understanding.

18 Q. So it's your testimony you did not read
19 the application that DP&L filed in Case 19-1121?

20 A. No. It's I can't remember having looked
21 at it. I think I may have. It's been, you know,
22 early on in the process.

23 Q. Would that have been before you drafted
24 your December 23, 2020, testimony?

25 A. Yes. If I looked at it, it would have

1 been at that time, but I don't remember looking at
2 it.

3 Q. So you don't remember looking at the
4 application from 19-1121 in the December 2020 time
5 frame when you were preparing your testimony.

6 A. I don't recall that, yes.

7 Q. I guess I am curious, how are you able to
8 file testimony in support of an application that you
9 didn't read or can't even remember what it says?

10 A. Well, my testimony is economic testimony,
11 and so it's economic financial accounting testimony.
12 And I offer the opinion that I offer, and my
13 conclusions were conclusions that are economically
14 based. I think it's up to counsel to use those
15 opinions in their briefs or whatever or in the
16 application. But, yeah, that's my answer.

17 Q. So did you -- did you do anything in
18 preparing your December 2020 testimony to determine
19 whether that testimony was consistent with the
20 application?

21 A. I didn't do anything -- I didn't make any
22 comparison like that.

23 Q. So -- so you wouldn't know if your
24 testimony contradicts that application then?

25 A. Yeah. I mean, I don't even recall what's

1 in the application. I'm assuming it's -- based on
2 what I understand, it's related to the SEET test, or
3 the SEET so.

4 MR. HEALEY: Your Honor, at this time I
5 would like to mark OCC exhibit -- and this would be
6 the application that I just referenced. It was filed
7 in Case 19-1121 on -- I apologize. On May 5, 2019,
8 on the Excel sheet I sent around, it was marked as
9 OCC 17. But this would be OCC Exhibit -- I am going
10 to mark it as OCC Exhibit 8, if that's all right with
11 your Honor, so I can reserve the other ones for our
12 testimony.

13 A. Should I put OCC 17?

14 MR. HEALEY: Yes. And can I have that
15 marked as OCC 8 for purposes of the hearing? I know
16 I maybe should have done A, B, C, or something.

17 EXAMINER SCHABO: That's fine. It will
18 be -- it will be marked as OCC Exhibit 8.

19 MR. HEALEY: Or, your Honor, if you
20 prefer, I can -- we can just mark them in number
21 order and just go 17, 27, 39, whatever to keep them
22 consistent with the Excel file. It doesn't matter to
23 me.

24 EXAMINER SCHABO: Actually, yes, let's do
25 that. Let's keep it consistent with the Excel file

1 you shared with all counsel and the ALJs prior to the
2 start of the hearing at our request. So the
3 application filed in Case No. 19-1121-EL-UNC filed on
4 May -- I -- on May 15, 2019, will be marked as OCC
5 17.

6 (EXHIBIT MARKED FOR IDENTIFICATION.)

7 MR. HEALEY: Thank you, your Honor.

8 Q. (By Mr. Healey) So, Mr. Malinak, I have
9 now had marked as OCC Exhibit 17 the application that
10 was filed in Case 19-1121. This would be the
11 application for the 2018 SEET case. Do you have that
12 in front of you?

13 A. I do.

14 Q. And now that you have seen this, do you
15 recall whether -- do you recall whether you have ever
16 looked at this application?

17 A. No. I mean, I have seen it. Over the
18 years I have seen many a filing that looked like
19 this. I don't recall specifically reviewing this.

20 Q. And let's stay on the first page of that
21 document and I just want to draw your attention to
22 the last sentence of the first paragraph where it
23 says "As supported in testimony by Company Witness
24 Craig Forestal, the Company's adjusted ROE excluding
25 DMR revenues for calendar year 2018 is 3.5%, well

1 below the 12 percent SEET threshold." Do you see
2 that?

3 A. I do.

4 Q. And so just to confirm, based on our
5 conversation we just had, it does appear that DP&L,
6 in fact, was excluding the DMR revenues for 2018
7 SEET, correct?

8 A. That's correct.

9 Q. And we also see that in the application
10 DP&L was using a 12 percent SEET threshold, correct?

11 A. Yes, for purposes of this filing, yes.

12 Q. Right. And you are not supporting with
13 your testimony a 12 percent SEET threshold, correct?

14 A. I mean, I'm not -- I support the
15 thresholds that are calculated by either 1.64 times
16 the standard deviation plus the mean or 1.5 because
17 those make sense but there is a safe harbor that I
18 calculate. But again, that's not an economic value,
19 okay? Safe harbors are not economic. They are legal
20 so. But I do have those in my testimony just to be
21 clear.

22 Q. Sure. And none of those three that you
23 just mentioned suggest that the SEET threshold for
24 2018 should be 12 percent, correct?

25 A. Yeah, I don't think so.

1 Q. But at the time you prepared those SEET
2 thresholds in your testimony, you were unaware that
3 DP&L had already proposed in its application a
4 12 percent SEET threshold, correct?

5 A. No. I was aware of that. I remember
6 people discussing that, but I didn't review this
7 application.

8 Q. When you say you remember people
9 discussing that, who are you referring to?

10 A. Counsel and client personnel who I spoke
11 with.

12 Q. Did you -- included in this document
13 that's now been marked OCC 17 is some testimony filed
14 by DP&L Witness Craig Forestal. Did you review that
15 before -- before preparing your December 2020
16 testimony?

17 A. I don't think so, but I really don't
18 recall.

19 MR. HEALEY: I would like to mark the
20 next exhibit. This will be OCC Exhibit 18, and this
21 one is the application that was filed on May 15,
22 2020, in the 2019 SEET case, Case 20-1041.

23 EXAMINER SCHABO: So marked.

24 (EXHIBIT MARKED FOR IDENTIFICATION.)

25 Q. (By Mr. Healey) Mr. Malinak, I am going

1 to ask you the same question here. Did you review
2 this application in advance of preparing your
3 December 2020 testimony?

4 A. I don't recall doing so.

5 Q. And the application also includes
6 attached to it testimony of a DP&L Witness Karin
7 Nyhuis. Maybe somebody can help me out? No?

8 A. I think it's Nyhuis but. I should know
9 that because I have heard her name before, but my
10 memory is so bad.

11 MR. HEALEY: Jeff.

12 MR. SHARKEY: Sorry. I was speaking on
13 the mute button. Nyhuis.

14 MR. HEALEY: Nyhuis, thank you. We read
15 these things for years sometimes before actually
16 knowing who these people are or how to say them.

17 A. I just want to offer my apology for
18 butchering it.

19 Q. Now, this -- this testimony from Ms.
20 Nyhuis in support of the 20-1041 application, did you
21 review that testimony when you were preparing your
22 own testimony?

23 A. I don't recall doing so.

24 Q. And so you don't know if your testimony
25 is inconsistent with that testimony, correct?

1 A. Well, I mean, my testimony is consistent
2 with it to the extent I can see right here that, you
3 know, excluding the DMR revenues, which I believe
4 should be done, from an economic financial point of
5 view should be done. Other than that -- so that's a
6 consistency there.

7 But without reviewing her testimony, you
8 know, in full, I couldn't say where things were the
9 same or different. I mean, I do know at the time
10 this was prepared, you know, it was prepared under
11 the Amended Stipulation and the DMR situation that
12 was there at the time. So, you know, things have
13 changed to some degree because of that, or over time
14 so.

15 But anyhow I have not -- I couldn't tell
16 you what we -- what differences there were and
17 similarities without going through her testimony.

18 Q. Now, you just said that things have
19 changed. I believe you said as a result of the ESP
20 III being withdrawn; is that correct?

21 A. I didn't say that but there were -- that
22 is -- that was a big change.

23 Q. And is the withdrawal of the ESP III what
24 caused you to file your December 23, 2020, testimony?

25 A. My understanding was that there were --

1 there were a couple of triggers for it including an
2 Ohio Supreme Court decision in the FirstEnergy case.
3 And I am -- as I sit here, there may have been
4 another trigger that's just right now not coming into
5 my brain so.

6 But, yeah, one of the changes -- oh, I
7 think as well the scheduling order in this matter
8 caused me to need to prepare testimony by
9 December 23, but I think the main -- an important
10 trigger was the FirstEnergy decision.

11 Q. Now, that FirstEnergy decision, you are
12 referring to a decision that was issued on December 1
13 of 2020, correct?

14 A. I don't remember the date, but I have no
15 reason to dispute that.

16 Q. Sure.

17 MR. HEALEY: Your Honor, I would like to
18 mark as the next Exhibit OCC -- this is OCC 15. This
19 is the Ohio Edison ruling from the Supreme Court In
20 Re: Determination of Existence of Significantly
21 Excessive Earnings for 2017 Under Electric Security
22 Plan of Ohio Edison Company, and it is 2020-Ohio-4540
23 in the Supreme Court's Recorder.

24 EXAMINER SCHABO: So marked.

25 (EXHIBIT MARKED FOR IDENTIFICATION.)

1 Q. (By Mr. Healey) Mr. Malinak, do you have
2 a copy of OCC 15 in front of you?

3 A. I do.

4 Q. And is this the FirstEnergy decision you
5 were just referencing?

6 A. It appears -- it appears to be. You
7 know, mine looks different than this.

8 Q. Sure.

9 A. But it appears to be.

10 Q. Can you see on the first page near the
11 top that it says December 1, 2020, decided, correct?

12 A. I see that.

13 Q. And that would have been after DP&L filed
14 its testimony in support of the settlement on
15 November 30 in this case, correct? Ms. Schroder's
16 testimony?

17 A. I am not aware of the date of her
18 testimony, but again, I have no reason to dispute it.

19 Q. Now, prior to this ruling and the
20 Attorney Examiner's entry allowing for the
21 December 23 testimony, you were going to testify in
22 this case only with respect to the 2680 case, on the
23 prospective SEET and the MFA test, correct?

24 A. That's my understanding.

25 MR. HEALEY: Your Honor, I would like to

1 mark as OCC's next exhibit this is -- this we will
2 have to figure out how to do this, but it comes from
3 OCC's 37. Those are the discovery responses. I am
4 not marking the entire thing because it's only some
5 of it that's relevant for now. So I would like to
6 mark pages 1 -- in the PDF pages 1 to 5 and page 76
7 and maybe we can call this 37A because we will use
8 others of these in the hearing as well.

9 EXAMINER SCHABO: Give me just a moment
10 to get this pulled up, please.

11 MR. SHARKEY: Mr. Healey, can I hear the
12 pages, again, please?

13 MR. HEALEY: For the purposes of marking
14 the exhibit, I am marking pages 1 through 5 and then
15 also page 76 and those are the pages on the PDF.

16 EXAMINER SCHABO: So that would be the
17 pages with the caption going to actual No. 5 and page
18 76.

19 MR. HEALEY: Correct.

20 EXAMINER SCHABO: And you would like to
21 mark that as what?

22 MR. HEALEY: 37A.

23 EXAMINER SCHABO: So marked.

24 (EXHIBIT MARKED FOR IDENTIFICATION.)

25 MR. HEALEY: Thank you. I will explain I

1 marked the first five pages just so we have the
2 caption. The page 5 is Interrogatory 1-1, that's
3 what I am going to be asking about, and page 76 shows
4 the date that DP&L provided these responses just so
5 we have that in the record as well.

6 Q. (By Mr. Healey) Now I will ask you,
7 Mr. Malinak, to look at Interrogatory 1 -- well, I
8 guess let's start at page 76 actually.

9 A. Page 76.

10 Q. It should be "Certificate of Service" at
11 the top.

12 A. Yes.

13 Q. And this is signed by DP&L's counsel. Or
14 rather it's from DP&L's counsel showing that these
15 discovery responses in this document were served on
16 November 19, correct?

17 A. That appears -- appears to be the case.

18 Q. Great. Now let's go back to page 5 which
19 is OCC Interrogatory 1-1.

20 A. Okay. I'm there.

21 Q. And in this interrogatory, OCC asks DP&L
22 to identify the witnesses it intended to call in this
23 hearing, and we see DP&L's response after various
24 objections is they intend to call Sharon Schroder,
25 Karin Nyhuis, and R. Jeffrey Malinak, correct?

1 A. I see that.

2 Q. And as of November 19, you had only filed
3 one piece of testimony, your April testimony,
4 correct?

5 A. That's correct.

6 Q. And on November 30 when testimony in
7 support of the Stipulation was due, you did not file
8 supplemental testimony supporting the Stipulation,
9 correct?

10 A. That's correct.

11 Q. So we understand that as of -- as of
12 November 30 when DP&L filed its testimony in support
13 of the Stipulation, you were -- the plan was for you
14 to testify only on the prospective SEET and the MFA
15 case, correct?

16 A. I think that's -- that's a fair
17 conjecture, although I don't -- I am not 100 percent
18 sure. I mean, that's the only testimony I had filed
19 but I'm just not sure procedurally whether, you know,
20 it would be possible for me to testify about
21 something else that I have knowledge of.

22 Q. Sure. Sorry. I didn't mean to cut you
23 off.

24 A. I am just trying to explain.

25 Q. Okay. I am just trying to set the

1 timeline.

2 A. Yeah.

3 MR. HEALEY: Maybe we can mark the next
4 exhibit then. This will be 37B and this will be the
5 same file just page 6.

6 EXAMINER SCHABO: Only page 6?

7 MR. HEALEY: Correct.

8 EXAMINER SCHABO: So marked.

9 (EXHIBIT MARKED FOR IDENTIFICATION.)

10 MR. HEALEY: Thank you.

11 Q. (By Mr. Healey) And this is a similar
12 response identifying what each witness will testify
13 on, correct? And it says you at the bottom will
14 sponsor your testimony from 20-680, correct?

15 A. Yes.

16 Q. Okay. Now, obviously you are sponsoring
17 more than that now, correct, because you filed
18 supplemental testimony, right?

19 A. Yes, that's correct. As I sit here
20 today, I'm sponsoring both.

21 Q. And did you read the entire
22 FirstEnergy/Ohio Edison ruling that we have now
23 marked as OCC 15 in preparing your December 2020
24 testimony?

25 A. I did.

1 Q. And that opinion informed your testimony,
2 correct?

3 A. Well, it depends on what you mean by
4 informed, but it was one of the things that I
5 considered when I was developing my retrospective
6 SEET testimony.

7 Q. And looking at what's just been marked
8 OCC 37B, we see that DP&L stated at that point that
9 Ms. Nyhuis was going to sponsor the testimony both
10 that she filed in 20-1041 and Mr. Forestal's
11 testimony from 19-1121, correct?

12 A. I'm sorry. Is this the -- this is page
13 6?

14 Q. Yes, Interrogatory 1-2.

15 A. Yes, I see that.

16 Q. Thank you. And your understanding is
17 Ms. Nyhuis will not be testifying now, correct,
18 because you took -- you and Garavaglia took her
19 place?

20 A. I mean, I should know that for sure, but
21 I don't. Sorry. I think that's correct, that she's
22 not testifying.

23 Q. Okay. Let's go back to OCC Exhibit 17
24 which is the application from Case 19-1121.

25 A. OCC 17. Hold on. Okay. I'm there.

1 Q. Okay. Great. If we could go to page 14
2 of the PDF which is Exhibit CAF-2.

3 A. CAF-2, I'm there.

4 Q. Great. Now, this is part of
5 Mr. Forestal's testimony and it -- again, now your
6 question, it looks similar in format to your
7 schedules, correct? It's got an earnings --

8 THE WITNESS: I did not hear Mr. Healey's
9 question. He froze. My screen froze.

10 Q. Okay. That's fine. I will restate. Can
11 you hear me now?

12 A. Okay. I can.

13 Q. Great. Now, this Exhibit CAF-2 looks
14 similar in format to the schedules that you filed,
15 Schedules 1 through 10, correct? It's got earnings
16 for common and common equity and then adjustments,
17 right?

18 A. Correct.

19 Q. And are you able to have this exhibit up
20 at the same time as your Schedule 1 to do a
21 side-by-side comparison?

22 A. I absolutely can. Just to be specific,
23 this is -- Schedule 1 is sponsored by Witness
24 Garavaglia and myself.

25 Q. Correct.

1 A. I am looking at it.

2 Q. Great. Now, you would agree that both
3 your Schedule 1 and Mr. Forestal's CAF-2 begin with
4 net income of about 86.7 million, correct?

5 A. Yes.

6 Q. And then you both make the same
7 adjustment next which is reducing -- or subtracting
8 about 82.6 million for the distribution modernization
9 revenues, correct?

10 A. Yes, I see that.

11 Q. And then there are two other smaller
12 adjustments that you both make. The first one is
13 \$17,000 for accrued penalty in account 426.3,
14 correct?

15 A. Yeah, 17,000, yep.

16 Q. And 9.7 million loss on disposition of
17 retired asset that you both make, correct?

18 A. Yes, that we make. We make it on
19 Schedule 1 that is not in CAF-2, yes.

20 Q. Sorry. I was actually referring to the
21 the 97 -- 9.7 million is on line 10 of your Schedule
22 1, and it is also on line 7 of CAF-2, correct?

23 A. That's correct. And I was just making
24 the fine point that this schedule, I co-sponsor this
25 schedule.

1 Q. Sure. I will try to refer to it as
2 Schedule 1 so my plural you is clear that I am
3 referring to.

4 A. Yes.

5 Q. Looking at Schedule 1, we see that there
6 are two new adjustments that were not included on
7 CAF-2, correct?

8 A. Yes.

9 Q. And that would be line 8 on Schedule 1
10 which is a property tax -- 2018 property tax
11 adjustment in 2019, right?

12 A. Yes.

13 Q. And then another property tax adjustment
14 of about 1.7 million on line 9, correct?

15 A. Yes.

16 Q. And the impact of those two additional
17 adjustments would be to reduce adjusted earnings for
18 common, correct?

19 A. That's correct.

20 Q. And now looking at the common equity
21 portion, there are a few differences between Schedule
22 1 and Exhibit CAF-2, correct, just generally?

23 A. Yeah, definitely.

24 Q. And the first one is on Schedule 1 for
25 the proprietary capital on line 13. Schedule 1 takes

1 an average of five different numbers, whereas, CAF
2 takes an average of just 2, correct?

3 A. I don't believe it's an average. When
4 you are saying an average, you are talking about --
5 are you talking about the final column? Okay.

6 Q. Correct. Sorry. Yes, let me rephrase.
7 The final column marked "Average Beginning and Ending
8 Balances" is the average of the previous five on
9 Schedule 1, correct?

10 A. That's my memory. It's definitely an
11 average of quarterly numbers.

12 Q. Right. As you look at the top of --
13 under "Average Balance and Ending Balance," it seems
14 to show it's the average of those numbers.

15 A. Yeah, correct, the five data points, yep.

16 Q. And then on CAF-2 it takes the average of
17 just two data points; is that correct?

18 A. That's correct.

19 Q. And can you tell me why -- why you and
20 Mr. Garavaglia changed the methodology from what was
21 done in CAF-2?

22 A. Yes. The use of average numbers so you
23 have a numerator that's a flow and you have a
24 denominator that's a stock, okay, it's a balance.
25 And so balance changes over time, and so the

1 averaging of two year-end numbers is designed to
2 get -- you know, to capture changes during the course
3 of the year. And that's why you do an average. That
4 way the numerator which is a flow is more in line
5 with the denominator, okay, because you've created a
6 situation that it's closer to a flow-type number.
7 This is a very sort of basic thing that is taught in
8 financial 101 when you try to calculate numbers like
9 this.

10 And so it's actually, you know, more
11 accurate in some ways, in many ways, to do it
12 quarterly because when you do it with just annually,
13 you're assuming that changes occurred smoothly over
14 the course of the year and that's unlikely to be
15 true. So if you can include more data points in the
16 average, you are going to get a truer, you know, a
17 truer average just mathematically and given the
18 nature of what a balance sheet is.

19 Q. And in deciding to use the quarterly
20 numbers, did you re-review any PUCO precedent to
21 determine that's how they typically make this
22 assessment?

23 A. I did not. My opinion about it is just
24 based on me -- you know, what's the best method from
25 an economic point of view.

1 Q. And we see that as a result of using the
2 quarterly numbers, your last column results in a
3 higher proprietary capital than in CAF-2, correct?

4 A. Okay. When you say proprietary capital,
5 are you referring to -- I actually don't know this
6 for sure because I didn't look at it but are you --
7 you know, obviously my bottom line, my adjusted
8 common equity line, is a lot -- has more items than
9 CAF-2 does, okay? So are you -- which line do you
10 want me to look at on Schedule 1?

11 Q. Sorry. I am looking at line 13 on
12 Schedule 1 and comparing that to line 10 on Schedule
13 CAF-2 which --

14 A. Oh.

15 Q. -- is proprietary capital.

16 A. I'm sorry, Mr. Healey. That's my fault.

17 Q. No worries.

18 A. The term proprietary capital so. It
19 looks like it does.

20 Q. Right. And as we discussed before, the
21 result of using a higher number there in the common
22 equity would serve to lower the ROE, correct?

23 A. Yes, all else equal.

24 Q. Great. Let's --

25 A. To be fair I think the method in Schedule

1 is more accurate.

2 Q. I would like to focus on your Schedule 1
3 on line 19 which you call "Generation Asset
4 Impairments, Net of Gain on Sale." Do you see that?

5 A. I do.

6 Q. Can you just tell me why did you make
7 this adjustment on line 19?

8 A. Yes. This is sort of described at length
9 in my testimony and I have testified that this type
10 of adjustment makes sense economically. I think the
11 first time I did it was maybe five, six, seven years
12 ago in a PUCO effort. And the reason for this
13 adjustment is that going from one year to the next,
14 you can make accounting changes to equity that --
15 that cause it to go -- mostly to go down, a lot of
16 times to go down rather than up because accounting is
17 a conservative discipline. And so you could have a
18 writeoff. You could have your equity -- if you wrote
19 off 50 percent of -- some asset that caused a
20 50 percent reduction in equity, you could
21 artificially increase your ROE by just taking that
22 writeoff. And then you -- and you have the same
23 earnings, so you have the same numerator and much
24 lower denominator, but the nature of the set has not
25 changed at all, okay?

1 So this fundamental problem using book
2 equity as a denominator when you are trying to
3 measure whether a company has had significantly
4 excessive earnings, okay, from an economic point of
5 view, so the economics literature, the finance
6 literature, practitioners prefer a measure that's
7 often referred to as a return on invested capital as
8 a way to calculate the profitability or the earnings,
9 the real return on equity of an enterprise.

10 And so, you know, I advocated when trying
11 to determine, you know, if a utility is running
12 excessive earnings -- whether their earnings are
13 excessive, I have advocated adding back the writeoffs
14 like this so you reflect whether they are really
15 making any money or not, okay?

16 So that's why -- that's why I sponsor
17 this, this adjustment, and again, I have done it.
18 Even in my testimony I think in April I did a
19 calculation like this, so it's been that -- it's been
20 one of my things, you know, for a long time.

21 Q. And it's been one of your things for a
22 long time, you didn't cite any instances in Ohio
23 where the PUCO has adopted that recommendation,
24 correct?

25 A. I don't believe I did cite anything like

1 that.

2 Q. And when did these writeoffs actually
3 occur?

4 A. I think they mostly occurred in 2015 and
5 2016, but this number, I think, has writeoffs going
6 all the way back to 2012.

7 Q. And the writeoffs occurred then largely
8 before 2018, correct?

9 A. I think almost completely.

10 Q. And so --

11 A. Excuse me. Very quickly there was a --
12 you know, as this schedule shows, there was
13 9.7 million loss on disposition in 2018, so it's a
14 small -- but this number here was all pre-2018, the
15 line 19, I believe.

16 And by the way, just real quickly, that
17 number is net of gains on sale, okay? So it's all of
18 the -- so there can be, you know, increases to equity
19 that occur, you know, that -- that are not part of
20 operations, that are not, you know, related to
21 earnings, but there -- there are things that are done
22 that are one time or extraordinary and a gain on
23 sales fits that category. So this is writeoffs net
24 of gain on sale.

25 Q. Now, looking at Exhibit CAF-2, which we

1 have talked about a little bit, that exhibit does not
2 make this same adjustment, correct?

3 A. That is correct.

4 Q. And as we just discussed, the writeoffs
5 took place before 2018, so Mr. Forestal certainly
6 could have included that adjustment, right? He would
7 have known about it.

8 A. Yes, he could have, but I will note that
9 he does make the loss -- you know, add back loss on
10 disposition of retired asset. He does add that back
11 so. Conceptually that type of adjustment would be
12 made, but it was from the current year, not from
13 previous years.

14 Q. Right. So he only made the adjustment in
15 the year that it actually occurred, correct?

16 A. Yeah, yeah.

17 Q. Right. And you are making an adjustment
18 from previous years so that would be a distinguishing
19 factor, right?

20 A. Yeah, yeah. There is this conceptual
21 overlap that if you want to get to a -- you know, a
22 validly measured -- you know, as close to a validly
23 measured return -- or earnings return as possible,
24 then you want to consider these one time-type
25 impacts, okay? And the writeoffs are sort of like

1 that where there are big, you know, one time, you
2 know, accounting adjustments.

3 Q. So it's a one time accounting adjustment,
4 but your testimony is that this billion dollars
5 should just carry through every single year when the
6 PUCO does the SEET for purposes of assessing the
7 amount of equity.

8 A. If I were -- you know, I am making a
9 recommendation that they do look at that because --
10 or do include it and it's because if you looked at --
11 again, I used this example earlier, if -- let's say
12 that, you know, in 2016 at year end, they had
13 2 billion in equity and you wrote off a billion of
14 it, the next year you would suddenly have an ROE that
15 doubles, okay? That goes way up and it's three --
16 and it would reflect exactly the opposite you wanted
17 it to reflect. It would reflect what looks like a
18 healthy high earning business that's actually the
19 opposite, okay?

20 And so if I were, you know, designing a
21 SEET test that is proper from an economic --
22 economist's point of view, I would do it based on
23 return on investment capital, in this case a return
24 on investment equity capital. That's what I would
25 do.

1 Q. Now, you've used the phrase return on
2 adjusted capital and now return on adjusted equity
3 capital. Do either of those phrases appear in the
4 Ohio SEET law to your knowledge?

5 A. Well, the -- implicitly when the SEET
6 statute or the guidance from the Commission talks
7 about -- they use the word adjustment, I believe, I
8 would have to look back but -- to see whether it's
9 adjustments related to capital structure or to
10 recognize or consider committed future investment.
11 This is an adjustment to capital structure. That's
12 what this is, and equity is part of the capital
13 structure so. So just using an economic
14 interpretation -- I should say interpreting the
15 economic language in the statute, the guidance, I
16 would say it does support what I am -- what I am
17 representing.

18 MR. HEALEY: Your Honor, I am going to
19 move to strike that entire answer. My question was
20 does he know whether the statute includes the phrases
21 return on invested equity capital or return on
22 invested capital. I don't think his answer was
23 responsive.

24 EXAMINER SCHABO: I am going to overrule
25 the objection. We are going to go back to the first

1 bite of the apple, slightly different topic.

2 Mr. Malinak, try to answer the question
3 asked and only the question asked.

4 THE WITNESS: Yes, your Honor.

5 A. Could you please repeat your question?

6 Q. (By Mr. Healey) Yes. Are you aware
7 sitting here today whether the Ohio SEET statute,
8 which is 4928.143(F), includes either of the
9 following phrases, "return on invested capital" or
10 "return on invested equity capital"?

11 A. Those specific phrases, I don't believe
12 it does.

13 Q. Let's continue with your Schedule 1 and
14 this time I would like to look at line 21 which is
15 marked "AES Equity contributions 2020, 2021." Do you
16 see that?

17 A. I do.

18 Q. And what you have done here is add
19 300 million to the adjusted common equity to account
20 for contributions made by DP&L's ultimate parent AES
21 Corp., correct?

22 A. Yeah. These are investments -- these are
23 adding in the 300 million in equity capital that --
24 that was sort of foreseeably required at the time
25 with -- under the ESP III.

1 Q. Now, the -- the 300 million is comprised
2 of a 150 million investment that's already been made
3 in 2020, another 150 million that AES has stated it
4 intends to make in 2021, correct?

5 A. Yes, the sum of those two numbers.

6 Q. Right. And you understand the 2021 150
7 million has not actually happened yet, correct?

8 A. Yes, that's correct.

9 Q. And you certainly agree then that none of
10 that 300 million was invested in the years 2018 or
11 2019, correct?

12 A. Well, it depends on -- it depends on how
13 you define investment. If you define it narrowly, I
14 think the answer would be yes, but if you define it
15 sort of economically, I think it was foreseeable at
16 the time given the plan, grid modernization plan,
17 that there would need to be an equity contribution of
18 some kind in addition to what I was assuming in my
19 modeling for ESP III, and so I say this in my
20 testimony.

21 In fact, I was projecting like a 300
22 something million dollar, you know, contribution
23 total value from tax -- tax -- I forget the exact
24 term but AES agreement to forego tax payments from
25 DPL. And so even though that was made to DPL, it's

1 made into the complex, and so it shows they were
2 anticipating at the time that they would be put in
3 equity. So, I mean, that's my -- that's my economic
4 reason why it makes sense to add this back is because
5 it was foreseeable and even foreseen at the time that
6 they would need that equity so that's why.

7 Q. Sure. I understand why you say you are
8 doing that. My question was actually much simpler.
9 Was 150 million or 300 million actually put in in
10 2018 or 2019?

11 A. No. Those cash transactions had not
12 happened.

13 Q. Correct, right. And, in fact, the 2021
14 transaction may never happen because we can't predict
15 the future, right?

16 A. That -- it is possible that if, for
17 example, if -- you know, if the RSC were eliminated
18 or there is a big refund, that could impact, throwing
19 a wrench in the works, I think.

20 Q. Let's consider a hypothetical. Let's
21 say -- I will lay out the parameters of a
22 hypothetical and make sure you understand them. AES
23 makes an announcement that it plans to make an
24 additional \$500 million equity investment in DP&L in
25 the year 2025. Do you understand that parameter?

1 A. Yes. I accept that.

2 Q. Now, if -- if AES were to make such a
3 statement, would it then be your testimony we should
4 now add in an additional 500 million back in 2018 and
5 2019 based on AES's statement?

6 A. I would have to kind of know some more
7 about it. I mean, if they worked -- if they had
8 committed a capital spending plan, say a million
9 dollars or something, and one knows that you want an
10 optimal capital structure for the utility of, you
11 know, over 50 percent equity, that equity has to come
12 from somewhere.

13 And you have got a committed capital
14 plan, and they say we are going to put in 500 million
15 more, as long as that plan stays in place, then I
16 think for purposes of a SEET test, I would -- you
17 know, I would probably argue that you should include
18 it because it makes sense. Economically it makes
19 sense from a capital commitment standpoint.

20 Q. So is there any limit on AES's ability to
21 affect the SEET in this way, just make any
22 announcement on any amount you want for any year in
23 the future and then suddenly stick it back
24 retroactively and now we have got ROEs close to zero?
25 That's your proposal?

1 A. No, of course not. As I just stated, you
2 know, the commitment, my understanding is that as
3 part of the ESP III, that there was -- you know, that
4 there was a commitment to do a big capital spending
5 plan including grid modernization, hence the name
6 Distribution Modernization Rider as well as, you
7 know, based on my current testimony, DP&L's grid is,
8 you know, kind of in bad shape. Their investment is
9 low over time, probably in significant part because
10 of financial distress so. But if there is a
11 commitment that's made, that's when I think it's okay
12 to -- you know, to add that equity investment, okay,
13 because it's -- you've made an economic commitment to
14 do it.

15 Q. You are using the word "commitment." Are
16 you saying it's a legally binding commitment?

17 MR. SHARKEY: Object, your Honor. That's
18 a question of law that I don't believe Mr. Malinak
19 can answer.

20 MR. HEALEY: I am asking what he means
21 when he says the word "commitment." I am asking if
22 he means a legal commitment.

23 EXAMINER SCHABO: Objection overruled.

24 A. I can say that having it be a legal
25 commitment would be -- you know, is a stronger level

1 of commitment certainly. But when a company comes
2 forth and goes public with a commitment, they create
3 reputational risk if they go back against it. They
4 go back on it without reason, without reason, and
5 they can go back on it if -- you know, if there's
6 some big regulatory change, you know, that, you know,
7 causes this to become economic, for example, or they
8 say, you know, another thing that causes it to be
9 uneconomic in a way that everyone knows that it
10 was -- that it's reasonable for them to change their
11 mind later, then -- then they could -- you know,
12 when -- so I'm saying even if it's not a legal
13 commitment, it's an economic commitment because of
14 reputational risk.

15 Q. Let's turn --

16 EXAMINER SCHABO: Mr. Healey.

17 MR. HEALEY: Yes.

18 EXAMINER SCHABO: Sorry. Are you nearing
19 a change in testimony subject? It's 12:15. Should
20 we be taking a break? Should we be discussing lunch?
21 Do you have another 15 minutes on this subject?

22 MR. HEALEY: If I could have 10 minutes,
23 maybe even less than that, to wrap up where I
24 currently am, and then I am ready to move on to a
25 topic; and then can we discuss after that?

1 EXAMINER SCHABO: Absolutely. Thank you.
2 Just trying to get a time frame.

3 MR. HEALEY: Yes.

4 Q. (By Mr. Healey) Mr. Malinak, I would like
5 to go back briefly to your testimony from Case
6 20-680, the April testimony, please.

7 A. I have it.

8 Q. And in that testimony what I am going to
9 want to talk about is your Exhibit RJM-29. And if
10 anyone is using the PDF, that's page 188.

11 A. I have a paper copy.

12 MR. SHARKEY: Mr. Malinak, I caution you
13 that any of the values that are in the red box --
14 information in the red box is confidential.

15 THE WITNESS: Thank you, Mr. Sharkey.

16 Q. (By Mr. Healey) Okay. Mr. Malinak, on
17 Exhibit RJM-29, you provide projections of DP&L's
18 return on equity for years 2020 to 2023 for an ESP
19 with the RSC, correct?

20 A. That's correct.

21 Q. And this was done for purposes of the
22 prospective SEET test in the 20-680 case, correct?

23 A. Yes, that's correct.

24 MR. HEALEY: And I guess my first
25 question, which is not going to be for you, it's

1 going to be for Mr. Sharkey, I would like to know
2 whether we can publicly reveal the numbers for 2020
3 now that 2020 has ended and these pro -- these are
4 projected numbers from the past, so they wouldn't be
5 really relevant now that we have actual numbers soon,
6 so I would like to know if that would be acceptable.

7 MR. SHARKEY: Mr. Healey, at this point I
8 would like those to remain confidential. I would
9 have to discuss with my client whether or not
10 those -- those numbers need to be maintained as
11 confidential; and the fact that we are in a hearing
12 like this, it's impossible for me to have that type
13 of discussion. Perhaps at a break I could have a
14 discussion with my client, and we could come back and
15 talk, but ordinarily if this request was made, your
16 Honor, I would huddle up with my clients, and they
17 could tell me what their views are, but I am not in a
18 position to do that.

19 MR. HEALEY: Okay. Fair.

20 Q. (By Mr. Healey) Let's talk first about
21 the 2019 column. Do you see there? You've
22 identified equity 473.3 million, correct, for 2019?

23 A. That's correct.

24 Q. And does -- does that equity number there
25 include any of the 300 million from AES?

1 A. It does not.

2 Q. Okay. And I'm going to -- I am going to
3 ask this question, and I encourage you not to answer
4 unless your counsel weighs in. Without saying the
5 number for 2020 equity, can you tell me whether that
6 number includes any of the 300 million? I would
7 encourage your counsel to weigh in whether you can
8 answer that.

9 MR. SHARKEY: No objection to answering
10 that question.

11 A. Yes, it does.

12 Q. And does it include the entire
13 300 million?

14 A. No, it does not.

15 Q. How much of the 300 million does it
16 include for 2020?

17 A. 150 million.

18 Q. And that would be for the 150 million
19 that AES actually invested in 2020, correct?

20 A. That's correct.

21 Q. And did you add another 150 million to
22 2021 equity?

23 A. I did.

24 Q. And that would be for the 150 million
25 that AES intends to invest in 2021, correct?

1 A. That's correct.

2 Q. So for purposes of this Exhibit RJM-29,
3 you only included the 300 million AES investments in
4 the years they were actually made and the year
5 thereafter, correct?

6 A. That's correct.

7 Q. So at that point you did not think it
8 made sense to retroactively add the 300 million when
9 evaluating the SEET, correct?

10 A. Well, I mean, to be honest, I hadn't
11 fully thought that through; but, yeah, at that time I
12 did not do it.

13 Q. And I also notice on this Exhibit RJM-29
14 there is a footnote No. 5. And there in footnote
15 No. 5 you state that 5 equals 3 plus 910,700,000 net
16 loss from discontinued operations in 2016 and '17.
17 Do you see that?

18 A. I do.

19 Q. Is that a similar adjustment to the
20 \$1 billion adjustment you make on your Schedule 1 in
21 your more recent testimony?

22 A. It is and that's what the footnote says.
23 These were the losses in 2016 and 2017 only. Upon
24 further reflection and analysis, just I guess in a --
25 similar to the 300 million, I've included writeoffs

1 prior to 2020 -- 2016 as well, back to 2012. It adds
2 a little bit to the number.

3 Q. Well, not a little bit. It's about
4 \$100 million, right?

5 A. Yeah. I mean, yeah, that doesn't sound
6 like much, but compared to 900 million -- or sounds
7 like a lot but only like, you know, 10 or 11 percent
8 of 910,000 -- 910 million.

9 Q. Sure. 100 million is a lot to some
10 people.

11 A. It would be a lot to me.

12 Q. I haven't asked you what your hourly rate
13 is, so we don't know that.

14 MR. HEALEY: Your Honor, I am ready to
15 take a break if you would like to take a break, or at
16 least assess taking a break. I am at a good stopping
17 point.

18 EXAMINER SCHABO: I would like to take a
19 break at some point. The question is how long of a
20 break. It's approximately lunchtime for most people.
21 Is everybody okay taking about an hour lunch break
22 now?

23 EXAMINER WILLIAMS: Mr. Healey, are you
24 able to tell us roughly how much longer you need with
25 the witness?

1 MR. HEALEY: Yeah, probably another hour,
2 give or take.

3 EXAMINER WILLIAMS: I think an hour seems
4 to fit then.

5 EXAMINER SCHABO: All right.

6 MR. HEALEY: Maybe a little longer.

7 EXAMINER SCHABO: So if we came back at
8 1:30, that would be 2:30, 3 o'clock. Ms. Schroder is
9 estimated to be two hours. That's close to 5:00.
10 Let's do it. We will take a one-hour lunch. We will
11 come back on the record at 1:20.

12 (Thereupon, at 12:22 p.m., a lunch recess
13 was taken.)

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Monday Afternoon Session,
January 11, 2021.

- - -

EXAMINER SCHABO: We are back on the
record in Case 18-1875, et al.

Mr. Healey, you were in the middle of
your cross-examination of Witness Malinak. Would you
like to proceed.

You are still muted.

MR. HEALEY: There we go.

EXAMINER SCHABO: There we go.

MR. HEALEY: Okay. I am back on.

- - -

ROBERT JEFFREY MALINAK

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

CROSS-EXAMINATION (Continued)

By Mr. Healey:

Q. Mr. Malinak, let's continue with your
December 2020 testimony and I would like you to turn
to page 19, please.

A. Okay. I'm there.

Q. And I would like to talk a little bit
about the Table RJM-2 at the top. Do you see that?

A. I do.

1 Q. And you see under Scenario 4 you
2 calculate 13.2 percent ROE for 2018 and a
3 13.9 percent ROE for 2019, correct?

4 A. That's correct.

5 Q. And so we would interpret based on that
6 that if the Commission were to adopt a 12 percent
7 SEET threshold, that DP&L would, in fact, have
8 significantly excessive earnings under Scenario 4,
9 correct?

10 A. Yeah. If the Commission were to -- were
11 to adopt 12 percent, I think this would -- as the
12 upper threshold, that would lead to that conclusion,
13 yes.

14 Q. And the same would be true at least for
15 2019 for Scenario 5, correct?

16 A. Yes.

17 Q. Let's move to page 25 of your testimony,
18 please. And we are still in your December testimony.

19 A. Page 25, okay. I'm there.

20 Q. And on page 25 you have three tables that
21 you've marked as RJM-3A, correct?

22 A. Right. Yeah.

23 Q. And the first table you call the 1.5X
24 approach. By that you mean that to determine the
25 SEET threshold, you took the mean of the comparable

1 group and multiplied it by 1.5, correct?

2 A. Yes.

3 Q. And you also added 100 basis points to
4 that number after multiplying the 1.5?

5 A. Yes. I generally did that for the -- it
6 depends on the scenario. When there is a without DMR
7 scenario, we don't add the 100 basis points.

8 Q. Okay.

9 A. I mean, I'm sorry. I misspoke. When the
10 DMR is included in the SEET -- you know, in the SEET
11 calculation in earnings for SEET purposes, I use
12 different methodology where -- you know, at the end
13 of the day you still -- it's still 1.64 standard
14 deviation of 1.5 times, but we don't add the 100
15 basis points.

16 Q. Got it. And is the same true for 2019?

17 A. Yes.

18 Q. Now, on the standard deviation approach,
19 you did a similar thing. You took the mean of the
20 comparable companies and multiplied it by 1.64
21 standard deviation, correct?

22 A. Not exactly the way you said it but,
23 yeah, we add 1.64 times the standard deviation to
24 the -- to the mean.

25 Q. Yes, thank you. Thank you for

1 clarifying. And again, you added the 100 basis
2 points adder but only in certain situations on this
3 table as well?

4 A. Yeah, yeah, toward the -- instances where
5 the DMR is excluded for purposes of the SEET.

6 Q. Okay. Now, as between these two tables,
7 the 1.5 times approach and the standard deviation
8 approach, are you recommending the Commission adopt
9 one table over the other as your recommendation?

10 A. Let me get back to the -- to the tables,
11 okay? Hold on a second. I was looking at something
12 else. In general, you know -- I say this in my
13 testimony. From a sort of statistical and economic
14 standpoint, the 1.64 times the standard deviation
15 approach plus -- plus 100 basis points in certain of
16 the scenarios is -- is a sounder approach that's
17 based in real statistical logic. So, you know, if I
18 had to recommend one, I would recommend that standard
19 deviation approach.

20 Q. Let's turn to page 31 of your testimony,
21 please.

22 A. Okay. I am there.

23 Q. And I want to direct your attention to
24 line 16.

25 A. Yes.

1 Q. And on line 16 you state "an increase in
2 risk should be recognized through an increase in the
3 utility's rate of return in order to compensate
4 investors for bearing extra risk." Do you see that?

5 A. I do.

6 Q. And would you agree then that the reverse
7 is true, that when there is a decrease in risk, that
8 the utility's rate of return should be decreased?

9 A. As a general matter, yes. If -- if you
10 know risk and return are related, joined at the hip
11 in finance, so the lower -- if the utility is lower
12 risk, its approved rate of return should be lower as
13 well.

14 Q. And when you say approved rate of return,
15 are you referring to approved rate of return in a
16 base rate case or something else?

17 A. Base rate case would be one of the -- one
18 of the types of cases where there would be an
19 approved rate of return, but it would be any
20 regulatory setting where the Company is subject to
21 rate of return regulation.

22 Q. Do you know, when the Commission approved
23 the DMR for the first time, did it then lower DP&L's
24 rate of return to account for the decrease in risk?

25 A. Well, I think -- I think before the DMR,

1 there was -- there was also a nonbypassable charge.
2 So, you know, if the DMR was approved and it maybe
3 increased that nonbypassable charge, you know, there
4 may have been some slight reduction in risk but, you
5 know, it was sort of borne out by what the rating
6 agencies did after the DMR was approved. So but
7 there may have been other factors to consider when
8 you are looking at the company's rate of return, but
9 all else equal, the risk is lower, the rate of return
10 should also be lower.

11 Q. Let's move to page 34 of your testimony,
12 please.

13 A. I am there.

14 Q. And I direct your attention to line 7.
15 There is a sentence that says -- well, start at the
16 end of line 7, "a firm's earnings are 'excessive' in
17 an economic sense only if the firm earns more than
18 its cost of capital over an extended period of time."
19 Do you see that language?

20 A. I do.

21 Q. And what do you consider to be an
22 extended period of time when you make this statement?

23 A. Well, it's not a precise type of
24 statement. It would -- basically it means probably
25 at least a three years, but it's not precise,

1 definitely more than one. And so it should be -- you
2 know, but with respect to like when you are looking
3 at returns on equity and cost of capital, the horizon
4 is infinite, but I would say probably, you know, at
5 least three years and, you know, more likely more
6 than that, like five, five to ten years, something
7 like that. Again, there's nothing scientific about
8 that -- that period, okay? I would have to look back
9 to see if anybody -- I would have to think more about
10 it to find out scientifically how long that period
11 would be.

12 Q. And you haven't done that scientific
13 analysis for purposes of your testimony, correct?

14 A. I have not.

15 Q. So based on your statement here about
16 using an extended period of time, that would suggest
17 that it would be impossible to look at a single year
18 and determine that any entity has significantly
19 excessive earnings, correct?

20 A. No. You could look at one year, but you
21 would have to make adjustments. The point of this
22 discussion is to support the -- an interpretation, or
23 I should say the economic language that's in the SEET
24 statute and in the guidance from the Commission that
25 allow for adjustments to capital structure, to

1 earnings, to bring more in line with what -- with a
2 longer term, measurable term, and so that's the point
3 of this, to support the making of adjustments.

4 Q. Those adjustments, those are based on
5 things that happened outside of that one-year period,
6 right? Many of them at least?

7 A. Yeah. I would say a number of the
8 adjustments would, you know, would relate to prior
9 periods or to future periods. In this case, you
10 know, my adjustments are both adding back losses from
11 prior periods but also recognizing DP&L went to make
12 capital adjustments which presupposes an equity
13 investment in a year.

14 Q. Sure. So my question was whether it's
15 possible to only look at one year and determine just
16 looking at that year whether a company had
17 significantly excessive earnings, and you seemed to
18 suggest you could do that, but then your response
19 was, well, you have to look at these adjustments, but
20 those adjustments are not from that year, so do you
21 see where I am getting hung up?

22 A. It's possible that a single year would be
23 reflective of the longer-term rate of return, but you
24 would have to consider these different economic
25 adjustments, okay? And in particular whether there

1 have been significant writeoffs from prior years in
2 order to get what I would consider to be an
3 economically sound, you know, return on equity
4 calculation.

5 So -- so it's possible but it's -- it's
6 if you considered all those things. For example, you
7 know, a company -- the writeoffs here were very
8 large, okay? So if you -- if you consider whether
9 there were writeoffs and they weren't very big, okay,
10 then with respect to that one adjustment, you know,
11 using that company's return on equity for that one
12 year, or their equity as the denominator on the
13 return of equity would be valid, okay? So that -- so
14 that's -- so it's possible that a single year
15 would -- would, you know, be a good measure of the
16 long-term ROE.

17 Q. Let's talk a little bit more about your
18 future base adjustments. So you acknowledge that,
19 for example, the 300 million from AES is based on
20 things that happened after the end of the SEET year
21 in question, 2018 to 2019, correct?

22 A. Well, actually I wouldn't put it that
23 way. As I said earlier, you know, the company had
24 already committed, you know, to make these capital
25 investments. And so given the optimal capital

1 structure for a utility investment which is over
2 50 percent equity, you could look at the numbers and
3 see that there would have to be an equity investment
4 later, so it wasn't things that happened later. It
5 was my analysis, my inclusion of the 300 million is
6 based on what was known at the time.

7 Q. So is it your testimony that that
8 \$300 million commitment was made in 2018?

9 A. There was a commitment, implicit
10 commitment, to make an equity investment like that.
11 And so the exact number, you know, if, in fact,
12 something that we only new ex-post but it was -- you
13 know, it was knowable at the time based on the
14 company's commitment to make their investments.

15 Q. You use the phrase "implicit commitment."
16 You will have to help me out. That doesn't seem to
17 compute in my brain on -- that would have any
18 meaning. What is an implicit commitment?

19 A. Well, as I -- as I thought I described
20 earlier, the -- if you have a capital plan in place,
21 okay, and you know you are going to be making a big
22 capital investment, you can't finance it with
23 100 percent debt, okay? There needs to be some
24 equity involved in it. So when I say implicit, I
25 mean by making the commitment -- by the way this is

1 a -- very consistent with the language in the statute
2 or in the guidance, I can't remember which, that
3 talks about the need to consider committed capital
4 investment in the state. I mean, once you have
5 committed to it, you can foresee that you are going
6 to need to have sufficient equity to support the debt
7 to make the investment. And so you can call that
8 implicit.

9 Explicit would be we agree, you know, to
10 put in 300 million, you know, in year X. But you
11 don't really know for sure how things are going to
12 work out, what the costs are going to turn out to be,
13 so, you know, but you can -- you can know at the time
14 that you are going to have to come up with that
15 equity. Does that make sense?

16 Q. No. The record will determine whether
17 that makes sense. The -- so I guess what I am --
18 what I am trying to understand is you understand that
19 when the Commission assesses a utility's
20 significantly excessive earnings for a given year,
21 let's say 2018, they have to do that after 2018 ends,
22 correct?

23 A. Yes.

24 Q. And because under your analysis we can
25 consider future capital investments, there would

1 never seem to be a point at which the Commission
2 could actually make an assessment because they would
3 have to keep waiting to see, well, maybe there will
4 be more capital investments next year. Let's wait
5 and not assess 2018 yet. But we don't know if
6 there's going to be capital investments the year
7 after that. So let's wait. So we will never
8 actually get around to the Commission deciding
9 whether you had significantly excessive earnings in
10 2018; isn't that right?

11 A. No. I don't think that's right because
12 what -- what the SEET statute says is that the
13 Commission can't make a judgment about future capital
14 investment in the state and about -- they can make
15 adjustments to the capital structure of the company.
16 And so it's within their purview and their judgment,
17 and so it -- they obviously can -- in my view can,
18 you know, make a SEET determination. They just have
19 to make the right adjustments to the calculations to
20 reflect the things that the statute seems to be --
21 statute seems to be based from an economic point of
22 view identifying.

23 Q. So let me understand the -- let's stick
24 with my example of 2018. The determination of
25 whether DP&L had significantly excessive earnings in

1 2018 might depend, in part, on when the PUCO happens
2 to be ruling on that case, correct?

3 A. I'm not sure that I understand that.

4 Q. Sure. So let's say -- let's say the
5 Commission decides in the middle of 2019, all right,
6 we are going to hold a hearing on the 2018 SEET case.
7 It might come up with one result, right? Yes or no.
8 It will say, yes, there were significantly excessive
9 earnings; no, there weren't, correct?

10 A. I think it could make a determination
11 based on, you know, what they knew at that time, yes.

12 Q. And -- and now we are assessing 2018 in
13 the year 2021, and your testimony seems to suggest
14 that you could get a different answer in a PUCO case
15 that happens in 2019 or one that happens in 2021 even
16 though both are backward looking at the year 2018; is
17 that correct?

18 A. No, I don't think so. I mean, if the --
19 in this case, let's look at this case. We know in
20 2018 that the company committed to make these capital
21 investments, all right? And so you are going to need
22 to add some equity to the -- to the denominator to
23 reflect that commitment, all right? In order to, you
24 know, obtain a sort of economically appropriate ROE,
25 okay? So at that time, you know, 2018, do you know

1 exactly what that equity investment is going to be?
2 You may not know it exactly, but you have a pretty
3 good idea as long as the plan, you know, happens.

4 So I think you could, you know, as long
5 as that assessment is made, you know, in the same
6 fashion over time, you would end up getting the same
7 result because it would be driven by the expected
8 capital needs for the -- for the plan.

9 Q. But -- go ahead. Were you done?

10 A. Yeah. I said if it is known, if it is
11 known, okay, in 2019 and in 2020.

12 Q. So in 2018 when you are talking about
13 planned capital investments, did that include DP&L's
14 planned capital investment in grid modernization?

15 A. Yes.

16 Q. And do you know whether those planned
17 investments from 2018 are the same as the investments
18 that DP&L is proposing through the Stipulation in
19 this case?

20 A. I don't know if they are exactly the same
21 or not.

22 Q. So if the Stipulation changes what
23 capital investments DP&L is proposing from the ones
24 they made in 2018, that would affect your analysis of
25 how much equity they might have to put in, correct?

1 A. Well, I think the watch word is -- to the
2 approach to take would be what was known at the time
3 that you are measuring the equity of the company
4 which is sort of -- for 2018 it would be mid 2018,
5 2019 it would be mid 2019. And so -- but to the
6 extent that there is information that the Commission
7 has access to that comes after that time about what
8 was known at that time, I think that's -- or known or
9 knowable at that time, I think that's a reasonable
10 thing for the Commission to do.

11 So if -- if there were more and better
12 information about the capital requirements for the
13 plan, then, you know, it seems to me reasonable that
14 the Commission could consider those -- those -- that
15 new information when it was making its determination.

16 Q. Okay. So going back to my previous
17 question then now that you seem to have reversed
18 because now you are saying the Commission can
19 consider new information which would suggest that the
20 retrospective SEET analysis depends, in part, on when
21 the Commission is doing that analysis, for example,
22 2019 versus 2021.

23 A. Yes, but only to the extent to which it
24 informs the Commission as to what was kind of known
25 and knowable at the time that your measurement would

1 occur so.

2 Q. So don't you think that seems a little
3 unusual to have a law that changes in substantive
4 result just based on when the Commission happens to
5 get around to holding a proceeding?

6 A. I really don't have an opinion on, yeah,
7 the construction of the statute and the public -- I
8 think from a public policy standpoint, it's better to
9 use the best information you have.

10 Q. Sure. And when you say from a "public
11 policy standpoint," that's your personal view of
12 public policy, correct?

13 A. Yeah, informed by -- you know, informed
14 by my training and experience, yes.

15 Q. Sure. And it's possible the Ohio
16 legislature has a different opinion on public policy
17 than you personally, correct?

18 A. That is certainly true.

19 Q. Let's turn to page 13 of your testimony,
20 please.

21 MR. SHARKEY: I'm sorry, Mr. Healey.

22 What page?

23 MR. HEALEY: 13.

24 A. Okay. I am there.

25 Q. I would like to direct you to line 14,

1 the first full sentence that says "Thus, when DP&L's
2 customers pay rates that include a DMR that is
3 earmarked and restricted to be used to pay down debt,
4 the customers receive a 'return benefit' in the form
5 of lower capital costs that are passed through in
6 future rates, as well as high quality service." Do
7 you see that?

8 A. I do.

9 Q. My first question is you use the word
10 "earmarked." Are you suggesting that the DMR funds
11 are held by DP&L in a segregated account, or were?

12 A. My understanding was that there were
13 restrictions on the use of the DMR, and I think I
14 also heard, although I did not sort of independently
15 verify that, there were separate accounts that were
16 used to track DMR funds, but I don't know whether
17 those were DP&L, DPL, or where they were, where those
18 accounts were.

19 MR. HEALEY: Your Honor, I am going to
20 move to strike where he said "I've heard." He is
21 relying on hearsay for his response and lacks
22 personal knowledge of that information.

23 MR. SHARKEY: If I may, your Honor.

24 EXAMINER SCHABO: Yes.

25 MR. SHARKEY: He is testifying as an

1 expert witness, and he relies on information he
2 receives from the company including financial
3 information. It's reasonable for him to rely upon
4 information he receives from the client or from DP&L
5 in his capacity as an expert.

6 MR. HEALEY: May I respond, your Honor?

7 EXAMINER SCHABO: You may.

8 MR. HEALEY: Thank you. I don't disagree
9 he can rely on information and use that to form the
10 basis of his expert opinions. He cannot rely on that
11 information and then insert it into the record as a
12 fact because it remains hearsay for that purpose.
13 That is what I am objecting to.

14 EXAMINER SCHABO: Karen, could you read
15 back the question and the answer.

16 (Record read.)

17 EXAMINER SCHABO: I've heard enough. I
18 am going to overrule -- I am going to deny the motion
19 to strike. You asked him what he meant to suggest by
20 the word "earmarked," and I believe he answered that
21 question.

22 Q. (By Mr. Healey) Looking at the same
23 sentence, Mr. Malinak, you -- you use the phrase
24 "lower capital costs." Can you tell me what you mean
25 by lower capital costs there?

1 A. Yes. Relative to the situation where
2 there is no DMR, no nonbypassable charge, the
3 company's costs would be higher, their equity costs
4 would be probably higher, so their overall costs of
5 capital would be higher because it would be a riskier
6 company. Or if the DMR is included in earnings for
7 SEET purposes, you would also have a riskier entity,
8 and so keeping the DMR or having the ratepayers or
9 customers pay the DMR, it would -- actually keeps
10 them from being in that financially distressed
11 situation. It improves their credit rating and their
12 cost to debt, the cost of equity, the cost of
13 capital, and so because the cost of capital
14 regulatory model is a passthrough cost, it provides a
15 returned benefit in the form of lower capital costs
16 is what I mean there.

17 Q. You said just now that the cost of
18 capital is a passthrough cost. Are you suggesting
19 that utility customers necessarily pay a utility's
20 exact cost of capital?

21 A. Over the long run if the regulatory model
22 functions the way that it is supposed to, the answer
23 is yes.

24 Q. And you understand that there can be a
25 number of years in between utility rate case filings,

1 correct?

2 A. Yeah. There can be regulatory lag, yes.

3 Q. And so if a utility lowers its cost of
4 capital in between rate cases, customers don't
5 immediately get the benefits from that lower cost of
6 capital, correct?

7 A. I don't know. I mean, well, it depends
8 on what the utility is up to. If they are, you know,
9 raising capital or even thinking about doing it, and
10 I think that, you know, in between rate cases, if you
11 will, the company can, you know, build plant
12 equipment and so forth, and they might be able to do
13 that at a lower cost if their risk is lower even if
14 the rate of return has not been adjusted yet. So
15 customers would benefit from that construction.

16 Q. Okay. But you understand that customers'
17 rates would not immediately get adjusted downward to
18 account for the new costs of capital, correct?

19 A. That's true.

20 Q. And so during that interim period when
21 the cost of capital has gone down, the difference
22 accrues to the utility, correct, not to customers.

23 A. Yeah, on that -- on that piece but I --
24 you know, leaving my other piece of my answer in
25 there, that customers could benefit, you know, in

1 sort of a shorter term if the Company is able to
2 issue debt more cheaply, that kind of thing.

3 Q. Have you reviewed Mr. Buckley's testimony
4 in this case, Staff witness?

5 A. I have.

6 Q. And are you aware that he is recommending
7 that a hypothetical capital structure be used for the
8 retrospective SEET cases?

9 A. I am.

10 Q. So that would be an example where
11 customers are not necessarily benefiting from the
12 exact cost of capital if, for example, the Commission
13 uses some hypothetical capital structure, right?

14 A. No, not necessarily because the question
15 is what are the right rates of return to apply to
16 those -- to those -- to that hypothetical capital
17 structure and that will be driven by the risk of the
18 entity, okay? And in, you know, finance and capital,
19 if the Company's capital structure is temporarily out
20 of whack, one assumes that for purposes of cost of
21 capital that a company is going to ultimately return
22 to a -- you know, to the equilibrium capital
23 structure. So -- so I don't draw the conclusion that
24 you were describing.

25 Q. You describe in your testimony where we

1 were just discussing, on page 13, starting at line
2 14, you use the phrase "capital costs are passed
3 through." That would suggest a dollar-for-dollar
4 reduction in the next rate case, wouldn't it?

5 A. If the utility's risk has gone down or is
6 lower than some other scenario, then -- and plus the
7 capital proceeding is done in a -- in a -- the right
8 way and, you know, there's -- arguments on both sides
9 are weighed and regulators do a good job of
10 picking -- targeting a capital structure, rates of
11 return, then, yes, at that point, you know, the rates
12 of return change and rates will go down or up.

13 Q. I think we mentioned this earlier, you
14 are aware that the DMR was 105 million per year,
15 correct?

16 A. Yes.

17 Q. You are not suggesting that customers
18 will save or could have saved \$105 million a year as
19 a result of lowering DP&L's cost of capital, correct?

20 A. Not -- not strictly through the lower
21 costs of capital but they would also -- you know,
22 I've described this in my prior testimony in support
23 of the DMR, the Amended Stipulation. They also get
24 benefits through Smart Grid, safe and more reliable
25 service and all of the things that come with it, so

1 capital is just one -- one part of the benefit.

2 Q. Sure. If we are looking just at, you
3 know, comparing the amount of the DMR to the amount
4 of savings as a result of having a lower cost of
5 capital, the DMR is going to be much bigger, right?

6 A. The DMR would be bigger.

7 Q. The -- sorry. Let me rephrase.

8 A. Yeah.

9 Q. The -- we've established that a company's
10 cost of capital is expected to be lower if it has a
11 lower risk, right?

12 A. Yes.

13 Q. And you believe that when the DMR is in
14 place, that lowers DP&L's risk, right?

15 A. Yeah, relative to a world in which they
16 don't have the DMR or they have just the RSC.

17 Q. Right. And so if we compared those two
18 worlds, one with the DMR and one without --

19 A. Yes.

20 Q. -- the savings in the DMR world based on
21 the cost of capital alone are not going to be
22 anywhere near 105 million, right?

23 A. Yeah, depends on what you -- what you
24 relate to the cost of capital. If the -- you know,
25 based on my analysis in the various testimonies,

1 it -- most utilities are looking for a middle range
2 investment grade credit rating and that's where
3 their -- theoretically anyway their cost of capital
4 should be minimized, all right? And that's where the
5 customers are getting -- paying the lowest possible
6 capital costs and that's also the place where you get
7 efficient investment, okay?

8 And regulators from the investors in the
9 utility are going to invest efficiently at that
10 level, so you could say that the -- the efficient and
11 best amount of construction is tied to the cost of
12 capital in that way, okay? So in that world, you
13 know, the customers are getting, you know, the
14 highest benefit in terms of safe and reliable service
15 in addition to, you know, having the lowest cost of
16 capital, having the lower cost of capital.

17 So anyway I just wanted to make sure we
18 don't say those things are separated because they are
19 kind of joined.

20 Q. Okay. Have you quantified what you just
21 described, the benefits to customers of efficient
22 investment by the utility?

23 A. I've done some analysis of that in my --
24 my April testimony of this year where I looked at the
25 impact of, you know, capital cost reductions on -- on

1 reliability. You know, we have got a very strong,
2 very strong relationship and now how does one put a
3 price or a cost on reliability, okay? And, you know,
4 with me, modern world, if my power goes out for 10
5 minutes, I am bummed out about it. So it's hard
6 to -- to put a price on that, okay?

7 So the answer is I have not put an
8 explicit value on it. But with, you know, the kind
9 of capital cost reductions that the company would
10 have to make in order to -- without an RSC or DMR,
11 you are talking about some pretty large declines in
12 reliability and that's not -- and that's not even
13 including safety so, you know, how much -- how much
14 is it worth? In my opinion it's worth -- you know,
15 it's worth it to put in the DMR. If you have Smart
16 Grid too, that comes with it.

17 Q. You are aware that DP&L has not actually
18 used any of the DMR funds to start its Smart Grid
19 program, correct?

20 A. You are talking about like the explicit
21 cash that's flowing in from the DMR. It's supposed
22 to go to debt reduction. So it would go into debt
23 service and debt reduction and that enables or
24 positions the company to make their advancement in
25 Smart Grid. Lowers their cost of capital.

1 Q. Let's move to page -- hold on a second.
2 Still on page 14 actually. Sorry. Move to page 14
3 of your testimony, please.

4 A. I'm there.

5 Q. Thank you. And on line 13 you -- and 13
6 and 14 you state that "it is important to recognize
7 that the SEET creates a fundamentally asymmetric risk
8 for Ohio utilities." Do you see that?

9 A. I do.

10 Q. And that's because in your opinion if a
11 utility has significantly excessive earnings and
12 wanted to pay a refund but there's no flip side to
13 that where they get to charge higher if their
14 earnings are low, right?

15 A. Yes. That's basically it.

16 Q. Are you aware that under the law if the
17 Commission orders DP&L to issue a refund in a SEET
18 case, DP&L has the unilateral authority to terminate
19 its ESP and instead move onto a Market Rate Offer?

20 A. I'm not aware one way or the other on
21 that.

22 Q. And if that were true, that would
23 mitigate some of the asymmetric risk, right? Because
24 it would give the utility an option to paying future
25 refunds, right?

1 A. Well, I mean, within that narrow sense
2 but, I mean, forcing the company to go to a rate
3 plan, go to an MRO, that is otherwise maybe not
4 great, you know, for them or their customers, that
5 doesn't -- that doesn't sound like a great option.

6 Q. You are aware that customers face some
7 asymmetric risk as well, right?

8 A. I don't immediately know what you are
9 referring to.

10 Q. Sure. Well, we will keep going then and
11 we will get to it. We talked about the lag between
12 rate cases earlier, correct?

13 A. Yes.

14 Q. And the utility decides when to file a
15 rate case, right?

16 A. I mean, that's my understanding.

17 Q. Right. Have you ever been involved in a
18 proceeding where someone else filed a rate case, you
19 know, and forced the utility into it?

20 A. I can't recall one.

21 Q. Right. So when a utility is earning a
22 very high return through its base rates, it's not
23 likely to file a rate case, right?

24 A. Define what you mean by very high return.

25 Q. Let's say DP&L's earning a 30 percent ROE

1 through its base rates, it's not going to come in for
2 a base rate, right?

3 A. Well, I mean, by definition they can't be
4 earning a 30 -- I mean, by definition, I mean, unless
5 they have got a 30 percent ROE in their last rate
6 case, their base rates are not going to provide a
7 30 percent ROE.

8 Q. But you understand that in the utility's
9 regulation the utility's actual return is not always
10 exactly the same of their approved return, right?

11 A. Well, it can go up and down. Normally it
12 goes up and down a little bit; and, by the way, we
13 are talking about, you know, their base rates and the
14 equity associated, if you will, with those base
15 rates. And so, you know, if the regulatory process
16 is working properly, they should be earning over the
17 long run at least, you know, whatever their approved
18 ROE is, whether it's 10 percent. The short return I
19 don't -- it's hard for me to imagine it could go up
20 as high as 30 percent.

21 Q. Sure. Well, let's think about it this
22 way, do you know when DP&L filed its most recent base
23 rate case?

24 A. My understanding is that they filed it in
25 2020. I mean, I think late 2020, like the fall of

1 2020, something like that.

2 Q. Right. Do you know when they -- do you
3 know when they filed one before that?

4 A. I actually don't know exactly when.

5 Q. Okay. Are you aware that between 1991
6 and 2015, DP&L filed no rate cases? That's a period
7 of 24 years.

8 A. I was not aware of that one way or the
9 other.

10 Q. And if a utility doesn't file a rate case
11 for 24 years, you would have to conclude that their
12 return was -- was satisfactory to the utility during
13 that 24-year period, correct?

14 A. Well, it would depend on, you know, how
15 much construction they were doing and, you know, and
16 various factors that go into determining whether or
17 not they thought a rate case was a good idea. And I
18 also don't know the rest of the regulatory structure
19 in Ohio and how that would affect -- because I know
20 that before 2015, I was certainly involved in filing
21 testimony in the rate proceedings of -- you know,
22 with DP&L. They weren't rate cases, maybe sort of
23 formal rate cases, but their rates were being
24 adjusted, I think.

25 Q. Let's move on to page 44 of your

1 testimony, please. And again, we are still in your
2 December 2020 testimony.

3 A. Yes. Page 44.

4 Q. And on line 6, there is a question "Does
5 the fact that DP&L has transferred its generation
6 assets to an affiliate affect your analysis?" Do you
7 see that question?

8 A. I do.

9 Q. And then on line 8 to 9 you note that it
10 "does not change the fact that DP&L's shareholders
11 made the investments in DP&L." Do you see that?

12 A. I do.

13 Q. Who are you referring to when you say
14 DP&L's shareholders there?

15 A. You know, it's kind of generic. You
16 know, maybe the words equity investor or equity
17 owners would have been a little bit more precise, but
18 the idea is that there was equity put into the
19 organization at some point in the organization's
20 history. And it was used to make investments, and at
21 the end of the day those investments went down
22 tremendously in value so they -- that investment was
23 lost, okay? So sort of the identity of the
24 shareholders really doesn't matter.

25 Q. So you are not referring to any specific

1 entity when you say DP&L's shareholders?

2 A. No. The point of this sentence is to
3 make the more generic point that a loss is a loss.

4 Q. And when you refer to the word
5 "affiliate" in line 6, you are referring to the fact
6 that the entity to whom the generation assets were
7 transferred is, like DP&L, a wholly-owned subsidiary
8 of AES Corp.; is that right?

9 A. It's a subsidiary of Inc. which is owned
10 by AES.

11 Q. Okay. It's a subsidiary of DPL Inc.?

12 A. Yes.

13 Q. So this entity that it was transferred to
14 is indirectly owned by AES then, correct?

15 A. Yeah, through the ownership of DPL Inc.

16 Q. Okay. Can you turn to page 6 of your
17 testimony, please.

18 A. Page 6?

19 Q. Yes.

20 A. Okay. Yes, I'm there.

21 Q. And I would like to talk about your
22 footnote 5. You reference there something called
23 "Valuation: Measuring and Managing the Value of
24 Companies." Do you see that?

25 A. I do.

1 Q. Is that a textbook?

2 A. You know, this is a book that our firm --
3 someone at our firm has that we rely on. It's in its
4 sixth edition. You know, I think -- I don't know.
5 When you say textbook, I just -- it's probably taught
6 in schools but I don't know that for sure but it is a
7 book.

8 Q. Okay. The portions that you were citing
9 there from this book, they don't pertain specifically
10 to the Ohio SEET, correct?

11 A. Oh, no. These -- this book is a book
12 about how to value companies in economics and
13 finance.

14 Q. Sure. And then in the same footnote you
15 also cite at the end something called "Investment
16 Valuation: Tools and Techniques for Determining the
17 Value of any Asset." Do you see that?

18 A. I do.

19 Q. And likewise that is not specifically
20 addressing anything involving the Ohio SEET, correct?

21 A. Yeah, not specifically. It's obviously
22 all very, very relevant to doing a proper SEET
23 analysis but from the point of view of economics and
24 finance, not -- not focused on SEET.

25 Q. And if we go to page 12, please.

1 A. I'm there.

2 Q. In footnote 9 you said "Principles of
3 Corporate Finance," I assume that does not also apply
4 specifically to the Ohio SEET?

5 A. Yeah, except in the way I just described,
6 you know, the fact that the SEET is a financial
7 measure, you know, all of these -- all of these
8 sources, all of these authorities are relevant to how
9 to -- how to analyze financial measures, so it's
10 relevant in that way.

11 Q. Sure.

12 A. It's not about the SEET.

13 Q. Right. None of these -- none of these
14 things you are citing here is how to do this for
15 purposes of the Ohio SEET, correct?

16 A. Yes.

17 Q. Or anything like that.

18 A. Correct.

19 Q. Okay. I will move on rather than make
20 you walk through each one for the entire rest of your
21 testimony which, I assume, others will appreciate.

22 You are aware that the Supreme Court of
23 Ohio overturned the PUCO approval of FirstEnergy's
24 Distribution Modernization Rider, correct?

25 A. What do you mean by "overturned"?

1 Q. They ordered it removed from
2 FirstEnergy's electric security plan.

3 A. Yeah. I mean, I am not a lawyer. I read
4 it as a nonlawyer. I mean, my reaction when I read
5 the opinion was that they didn't come to a decision
6 on the merits it didn't look like to me, again just
7 as a layperson. And it remanded it down to the
8 Commission, you know, for further review and
9 analysis. And so again, that's just my reading of it
10 as a layperson.

11 Q. Sure. And you understand that following
12 that Supreme Court ruling, whatever it might mean,
13 the PUCO then ordered DP&L to remove its DMR from its
14 electric security plan III, correct?

15 A. For purposes of the SEET in 2018 and
16 2019?

17 Q. No, just generally the PUCO ordered DP&L
18 to remove the DMR from its tariffs, correct?

19 A. I'm a little worried I got confused on
20 the decision we are talking about here. This is the
21 decision about the first -- about FirstEnergy's DMR,
22 right?

23 Q. So I am not trying to confuse you. There
24 are two FirstEnergy decisions on the DMR. We can
25 move on from that right now. I -- we agree that DP&L

1 is currently not charging customers for its DMR,
2 correct?

3 A. That's correct. It reverted to ESP I.

4 Q. And the reason they reverted to ESP I was
5 because the Commission ordered DP&L to take its DMR
6 out of the ESP III, correct?

7 A. I think that that action was in reaction
8 to the DMR being determined to be, I don't know what
9 the right word is, illegal or improper or whatever
10 but, yeah.

11 Q. Right. And to your knowledge, have
12 DP&L's customers gotten any refund for the amount of
13 DMR that they paid before it was removed from the
14 tariffs?

15 A. My understanding is they have not
16 received a refund like that.

17 Q. So just to make sure I understand the
18 general theme of your testimony, DP&L's DMR was found
19 to be unlawful, DP&L kept that money, and now you
20 think that that same money should be excluded from
21 the SEET for purposes of denying customers a refund;
22 is that right?

23 A. You know, as a financial economist, I
24 stay away from words like should, okay? I mean, I
25 have my opinion about the best way to do the SEET,

1 okay, and that's within my testimony. And -- and in
2 terms of what is -- you know, when I hear the word
3 should, I think of normative, you know, decisions,
4 justice, if you will, and from my point of view, just
5 an economist, I think the SEET should be administered
6 based on the data and reasoning and logic in my -- my
7 report so, my testimony.

8 Q. And used the word justice. You agree
9 that the SEET should be generally performed in a way
10 that provides justice to all parties, correct?

11 A. That's -- again, that's outside of my
12 expertise and purview.

13 Q. So you are not sure whether it should be
14 provide justice; it's possible it shouldn't?

15 A. No. I mean, it's that I -- determining
16 what is just is -- is not up to me. I mean, I --

17 Q. Sure.

18 A. For me justice, if you will, is, you
19 know, applying at least within the context of my
20 testimony is, you know, calculating the SEET in a way
21 that makes economic sense and is consistent with
22 which of the -- in the statute and in the guidance
23 from the Commission so that refunds are paid and the
24 result of that should be refunds are paid when --
25 when they are really warranted, okay? When there

1 really has been excess earnings in an economic sense.
2 Otherwise, the refund should not be paid.

3 Q. So you would agree that under your
4 analysis if it were determined that refund were
5 required, that would be a just result for DP&L's
6 consumers, correct?

7 A. Yeah. I mean, if the test was -- was
8 administered in a sound way economically, sound
9 manner, at least from my opinion, then and it showed
10 excess earnings in a particular year, then a refund
11 would be warranted, and I am talking about economic
12 excess earnings, you know, with -- measured with
13 proper adjustments to equity and earnings and all the
14 things we've been talking.

15 MR. HEALEY: Sure. Okay. That's all I
16 have, your Honor.

17 EXAMINER SCHABO: Thank you.

18 Do you have redirect?

19 MR. SHARKEY: Your Honor, I would like,
20 if I could, to take a 5-minute break for me to
21 consult with my client. Ordinarily we would be in a
22 conference room, and I would be able to exchange
23 notes and whisper with them to determine whether we
24 have any questions to ask or not. But since we are
25 not in that position, I would ask that I get a

1 5-minute break so I can confer with my client
2 quickly. Actually can you make it 10 and then we
3 will get back on? I don't anticipate I would have
4 much, if any.

5 EXAMINER SCHABO: Yeah. So we'll take a
6 10-minute break. We will come back on the record at
7 2:25.

8 Off the record.

9 (Recess taken.)

10 EXAMINER SCHABO: We'll go back on the
11 record.

12 MR. SHARKEY: No further questions, your
13 Honor. DP&L would renew its motion to admit
14 Exhibits 1A and 1B and Exhibit 2, and per our earlier
15 discussion we will hold on on renewing our motion for
16 Exhibit 3.

17 EXAMINER SCHABO: Okay. Any objections?
18 Hearing none, DP&L Exhibit 1A, 1B, and
19 Exhibit 2 will be admitted into the record.

20 (EXHIBITS ADMITTED INTO EVIDENCE.)

21 MR. HEALEY: Your Honor, can I move --
22 should I move my exhibits now, your Honor, or may I?

23 EXAMINER SCHABO: Actually I am going to
24 back up just real quick. I do not have any
25 questions. Judge Williams, did you have any

1 questions for Mr. Malinak?

2 EXAMINER WILLIAMS: I do not at this
3 time, thank you, Judge Schabo.

4 EXAMINER SCHABO: All right. Mr. Healey,
5 yes, please feel free to move whatever exhibits you
6 would like to move.

7 MR. HEALEY: Yes, your Honor. At this
8 time OCC moves for admission of OCC Exhibits 17, 18,
9 37A, and 37B.

10 EXAMINER SCHABO: Any objections?

11 MR. SHARKEY: Not from DP&L.

12 EXAMINER SCHABO: Hearing none, OCC
13 Exhibits 17, 18, 37A, and 37B will be admitted to the
14 record.

15 (EXHIBITS ADMITTED INTO EVIDENCE.)

16 THE WITNESS: Your Honors, am I dismissed
17 then?

18 EXAMINER SCHABO: You beat me to the
19 punch. Yes, Mr. Malinak, you are dismissed for the
20 day. We may need to call you back for a confidential
21 session that will be determined by the parties.

22 THE WITNESS: Thank you very much.

23 EXAMINER SCHABO: Thank you.

24 Judge Williams.

25 EXAMINER WILLIAMS: Thank you, Judge

1 Schabo.

2 Mr. Sharkey, you want to call your next
3 witness.

4 MR. SHARKEY: Yes, your Honor. Actually
5 Jeff Ireland is going to be the attorney who will be
6 handling the direct exams of DP&L's next witness
7 which will be Sharon Schroder.

8 EXAMINER WILLIAMS: All right. Mr.
9 Ireland, would you call your next witness.

10 MR. IRELAND: Yes, you Honor. Our next
11 witness would be Sharon Schroder who I think needs to
12 be...

13 MR. SCHMIDT: Ms. Schroder, if you can
14 enable your audio and video.

15 EXAMINER WILLIAMS: Ms. Schroder.

16 MS. SCHRODER: I'm getting a lot of
17 background echoing. I am not sure if it's me or you
18 guys.

19 EXAMINER WILLIAMS: It got better. Can
20 we test it a little bit longer?

21 MS. SCHRODER: Sure. This is better.
22 Maybe I was too close.

23 EXAMINER WILLIAMS: Could be. I don't
24 know. I'm glad it improved anyway. This is Judge
25 Williams. I want to begin by swearing you in.

1 (Witness sworn.)

2 EXAMINER WILLIAMS: Thank you.

3 Attorney Ireland, please proceed.

4 MR. IRELAND: Thank you, your Honor.

5 - - -

6 SHARON SCHRODER

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

9 DIRECT EXAMINATION

10 By Mr. Ireland:

11 Q. Ms. Schroder, could you please state your
12 name for the record and address.

13 A. Sure. Sharon Schroder, S-C-H-R-O-D-E-R,
14 my address is 1065 Woodman Drive, Dayton, Ohio 45432.

15 Q. And do you have before you what I believe
16 is DP&L Exhibit 4 which is the testimony in support
17 of the Stipulation and Recommendation?

18 A. Yes, I do.

19 (EXHIBIT MARKED FOR IDENTIFICATION.)

20 Q. And if I were to ask you all the
21 questions contained in your prefiled testimony, would
22 the answers be the same?

23 A. Yes, they would.

24 Q. And would they be true?

25 A. Yes, they would.

1 Q. And just also for the record do you have
2 in front of you what's been marked as the Stipulating
3 Parties Exhibit 1 which is the Stipulation in this
4 case?

5 A. Yes, I have that as well.

6 MR. IRELAND: Your Honor, I would tender
7 Ms. Schroder for cross-examination.

8 EXAMINER WILLIAMS: Thank you, Attorney
9 Ireland.

10 And on behalf of OCC, who is doing the
11 cross?

12 MS. O'BRIEN: I apologize. It will be
13 Angela O'Brien.

14 EXAMINER WILLIAMS: Thank you,
15 Ms. O'Brien. I'm sorry. I didn't have detailed
16 notes.

17 MS. O'BRIEN: No worries. I am glad to
18 know I was muted. Just so you know I am getting a
19 lot of background echo as well, so I will try to be
20 slow. But if I ask to have an answer repeated,
21 that's why.

22 EXAMINER WILLIAMS: Is there any way of
23 maybe adjusting your settings? As we proceed, it's
24 going to be kind of rough for a couple of hours. Do
25 you have multiple pieces of audio going?

1 MS. O'BRIEN: No, I don't actually.

2 EXAMINER WILLIAMS: Maybe turn down the
3 audio on your computer. We hear you pretty clear, so
4 maybe if you turn that down, it will help us.

5 MS. O'BRIEN: Okay. Is that any better?

6 EXAMINER WILLIAMS: Not really but let's
7 try it, see. If we have to, we can...

8 MS. O'BRIEN: Okay. Is that any clearer?

9 EXAMINER WILLIAMS: Yeah. I think it's a
10 little better.

11 MS. O'BRIEN: Okay. I'll just be
12 clearer.

13 - - -

14 CROSS-EXAMINATION

15 By Ms. O'Brien:

16 Q. Well, good afternoon, Ms. Schroder.

17 A. Good afternoon.

18 Q. Happy New Year. Okay.

19 EXAMINER SCHABO: I'm going to interject.
20 Ms. Schroder, if you would maybe adjust your volume
21 down a little bit as well.

22 THE WITNESS: Let's see if I can get it
23 lower. I have it down low.

24 EXAMINER SCHABO: Can you hear us?

25 We will give this another shot. Sorry to

1 interrupt.

2 Q. (By Ms. O'Brien) Okay. Okay. Now, you
3 testified that your current position with DP&L is the
4 Managing Director of Regulatory Affairs; is that
5 correct?

6 A. Yes, that's correct.

7 Q. Okay. Now, in your role as Managing
8 Director of Regulatory Affairs, your responsibilities
9 include, among other things, overseeing DP&L's
10 overall regulatory operations; is that correct?

11 A. Yes, that's right.

12 Q. And prior to this role, you were the
13 Director of Regulatory Affairs for DP&L?

14 A. Yes, that's right.

15 Q. And how long did you serve in that
16 position?

17 A. That was about two and a half years.

18 Q. Okay. Now, in these roles of DP&L, as I
19 understand it, you've been involved in numerous
20 proceedings before the PUCO; is that correct?

21 A. Yes, I have been.

22 Q. And you testified in the past in support
23 of settlements in PUCO proceedings?

24 A. Yes. Among others, yes.

25 Q. Are you testifying as a regulatory expert

1 today?

2 A. Yes.

3 Q. And, now, based upon your regulatory
4 expertise, is it your understanding that DP&L's
5 customer rates and service terms and conditions must
6 be accurately reflected in the tariffs filed with and
7 approved by the PUCO?

8 A. I'm sorry. Can you repeat that?

9 Q. Sure. I will repeat the question. Based
10 on your regulatory expertise, is it your
11 understanding that DP&L's customer rates and service
12 charges and conditions must be accurately reflected
13 in tariffs filed with and approved by the PUCO?

14 A. I would say that we are obligated to
15 charge the rates and tariffs that are approved by the
16 PUCO.

17 Q. Okay. So are you saying that DP&L is not
18 required to file tariffs with the PUCO?

19 A. We are required to file tariffs with the
20 PUCO.

21 Q. And those tariffs have to be accurate; is
22 that correct?

23 A. That's certainly true.

24 Q. And --

25 EXAMINER WILLIAMS: We are not going to

1 be able to proceed like this for a couple hours. I'm
2 sorry. Do either of you have headphones?

3 Ms. Schroder, I think we are really losing the
4 beginning of your answers.

5 MS. O'BRIEN: I can try to put earbuds.
6 I don't have headphones.

7 EXAMINER WILLIAMS: I'm not sure where
8 we're breaking down. It's prominently you,
9 Ms. Schroder.

10 THE WITNESS: Okay.

11 EXAMINER WILLIAMS: But maybe if
12 Ms. O'Brien goes to.

13 THE WITNESS: Does it help if I turn it
14 down?

15 EXAMINER WILLIAMS: I have plenty of
16 volume. It's just the echo, and we are losing the
17 beginning of your responses.

18 EXAMINER SCHABO: Karen, can we go off
19 the record for a moment while we figure this out?

20 COURT REPORTER: Yes.

21 (Discussion off the record.)

22 EXAMINER WILLIAMS: Let's go back on the
23 record.

24 MS. O'BRIEN: Can I have the court
25 reporter read back the last question.

1 (Record read.)

2 Q. (By Ms. O'Brien) Okay. Now, the purpose
3 of your testimony in this case is to describe this
4 settlement that was filed and to explain how in your
5 opinion the settlement satisfies the PUCO's
6 three-part test for evaluating settlements; is that
7 right?

8 A. That's right. But I would like to
9 correct, I think, my response, I think, regarding the
10 tariffs was that certain -- yes, that's certainly our
11 intention.

12 Q. Okay. And I guess -- and so I will just
13 go ahead and thank you for that correction. So
14 before we start into your testimony on the three-part
15 test, I would kind of like to go over the cases that
16 the settlement purports to resolve because there are
17 several cases involved; would you agree with me
18 there?

19 A. Yes, I agree.

20 Q. Okay. So the first case of the
21 settlement purports to resolve what I refer to as the
22 SmartGrid cases. And those are the cases concerning
23 DP&L's SmartGrid application that was filed in Case
24 No. 18-1875 and the two related cases 18-1876 and
25 18-1877. And is that your understanding as well?

1 A. Yes. Those are part of the Stipulation.

2 Q. Okay. And if I refer to those cases
3 collectively as the Smart Grid cases, will you
4 understand my meaning?

5 A. Yes.

6 Q. And is it your testimony that if the
7 Commission approves the settlement, that those cases
8 will be resolved?

9 A. I guess from my -- from my perspective,
10 yes. I don't have a legal opinion on exactly what
11 that means, but yes.

12 Q. Okay. Okay. And then another case the
13 settlement purports to resolve is Case No.
14 20-680-EL-UNC, and this concerns DP&L's pending
15 application for funding that its current electric
16 security plan passes the more favorable in the
17 aggregate test and the prospective significantly
18 excessive earnings test and -- is that your
19 understanding?

20 A. Yes, and that case is also part of the
21 broad settlement.

22 Q. Okay. And if I refer to this case as the
23 MFA SEET case, will you understand my meaning?

24 A. Yes.

25 Q. Okay. Now, the settlement also resolves

1 Case No. 19-1121-EL-UNC, and this case concerns
2 DP&L's pending application for a finding that it's
3 earnings in 2018 were not significantly excessive; is
4 that correct?

5 A. Yes, that's correct. It's also part of
6 the settlement.

7 Q. Okay. And if I refer to this case as the
8 2018 SEET case, will you understand my meaning?

9 A. Yes.

10 Q. Okay. And, finally, the settlement
11 purports to resolve Case No. 20-1041-EL-UNC which
12 concerns DP&L's pending application for finding that
13 its earnings in 2019 were not significantly
14 excessive; is that correct?

15 A. Yes, that's correct.

16 Q. If I refer to this as the 2019 SEET case,
17 will you understand my meaning?

18 A. Yes.

19 Q. Now, were you present throughout the day
20 for Mr. Malinak's testimony?

21 A. Yes, I was. I stepped away once or twice
22 for a couple minutes at a time but otherwise, yes.

23 Q. Okay. And so my only point is that, you
24 know, my references to some of these cases will be
25 the same. My questions are just to make sure that I

1 am keeping clarity for my own purposes too because
2 there is a lot going on.

3 Okay. Now, you testified that both the
4 2018 and the 2019 SEET cases are conducted under Ohio
5 Revised Code 4928.143(F); is that correct?

6 A. I am looking to see if I used those exact
7 references.

8 Q. I am actually on page 4 of your
9 testimony, lines 11 to 13.

10 A. Can you repeat the question, please?

11 Q. I just wanted to ask you if it was your
12 testimony that the 2018 and 2019 case -- SEET cases
13 are conducted under RC 4928.143(F)?

14 A. I believe that's what I am referring to
15 here, that that's part of our settlement. I don't
16 know if there are other sections that may have been
17 conducted under, but for purposes of the settlement,
18 that's the case that's incorporated.

19 Q. Okay. Are you aware of any other -- in
20 your regulatory expertise are you aware of any other
21 statute that the 2018 or 2019 SEET cases would be
22 reviewed under?

23 A. I don't know.

24 Q. Okay. And it's your general
25 understanding that the 2018 and 2019 SEET cases

1 conducted under this statute are sometimes referred
2 to as retrospective SEET cases?

3 A. Yes.

4 Q. And is that because part of the PUCO's
5 review is the utility's earnings for the prior year
6 under the electric security plan?

7 A. I don't know exactly why they are termed
8 that way, but I have heard that used including today.

9 Q. Okay. But your understanding is that the
10 term retrospective means generally backward looking
11 or in the past?

12 A. That means that, yes.

13 EXAMINER WILLIAMS: Ms. Schroder, try one
14 more time. We are really having problems when you
15 and Ms. O'Brien kind of overlap. If you could give
16 your answer one more time.

17 THE WITNESS: It means that, yes.

18 EXAMINER WILLIAMS: Thank you.

19 Q. (By Ms. O'Brien) And is it also your
20 general understanding based upon your reg --
21 regulatory expertise that in retrospective SEET cases
22 if the PUCO determines that the utility did have
23 significantly excessive earnings for the prior year,
24 customers could be entitled to refunds?

25 A. I'm not aware of any times that they have

1 issued -- or ruled on requiring refunds, no.

2 Q. Well, I guess that wasn't my question.
3 My question was is it your understanding if the PUCO
4 were to find the utility to have significantly
5 excessive earnings for the prior year, could
6 customers be entitled to a refund?

7 MR. IRELAND: I am going to object, your
8 Honor. I think it calls for a legal conclusion.

9 EXAMINER WILLIAMS: To the extent she
10 understands, I am going to let her answer.

11 MR. IRELAND: Thank you.

12 A. I don't -- I don't know. I suppose it
13 could, the Commission could do something.

14 Q. And I just want to go back for a second.
15 You -- we just went over that you are the Managing
16 Director of Regulatory Affairs for DP&L, right?

17 A. Yes, that's right.

18 Q. And so you -- you are involved again in
19 overseeing their regulatory -- I think you said their
20 regulatory policies and operations?

21 A. Yes, that's right.

22 Q. So would you be in charge of being --
23 would you be involved with these type of proceedings
24 on behalf of DP&L?

25 A. Yes, I would be involved.

1 Q. Okay. Okay. I would like to direct you
2 to page 4 of your testimony.

3 A. Okay. I'm there.

4 Q. Okay. I think here you testified that
5 DP&L is currently operating under the electric
6 security plan adopted in Case No. 08-1094-EL-SSO
7 which is referred to as the ESP I.

8 A. Yes, that's right.

9 Q. Okay. And my understanding of your
10 testimony is that one of the benefits of the
11 settlement is that DP&L can continue to operate under
12 the ESP I; is that correct?

13 A. I think there are many benefits, and I
14 think one of them is the fact that it provides
15 regulatory certainty and financial stability, and as
16 a packet, it benefits all customers as well as DP&L.

17 MS. O'BRIEN: Okay. Your Honor, I would
18 move to strike that answer as nonresponsive. My
19 question was whether her testimony was that one of
20 the benefits of the settlement was allowing DP&L to
21 continue under ESP I.

22 EXAMINER WILLIAMS: I am going to allow
23 her to -- that to stand in the record as part of her
24 explanation. We will let you continue to cross to
25 get the answer to your question.

1 MS. BOJKO: Excuse me. This is Kim.
2 Could I have the answer reread? We are not able to
3 hear. It's very choppy.

4 EXAMINER WILLIAMS: I tell you what,
5 Micah. Let's go ahead and guide somebody onto the
6 phone. I think probably Ms. Schroder. We are losing
7 you the most. So, Micah, can you get Ms.Schroder
8 onto a phone line, please.

9 EXAMINER SCHABO: Karen, we can go off
10 the record again while we do this.

11 EXAMINER WILLIAMS: Thank you,
12 Ms. Schabo.

13 (Discussion off the record.)

14 EXAMINER WILLIAMS: Let's go back on the
15 record.

16 And I believe you, Ms. Bojko, asked for
17 the question. Can we just do the question and the
18 answer, and we will get back on track.

19 (Record read.)

20 EXAMINER WILLIAMS: And perhaps it was
21 the most garbled we had.

22 Karen, go ahead and take us back off the
23 record, please.

24 (Discussion off the record.)

25 (Record read.)

1 MS. BOJKO: Thank you.

2 EXAMINER WILLIAMS: Ms. O'Brien.

3 MS. O'BRIEN: Okay.

4 Q. (By Ms. O'Brien) But you would agree with
5 me that if the Commission approves the settlement,
6 the DP&L will be allowed to continue operating under
7 ESP I; is that correct?

8 A. It would operate under ESP I, or our
9 current ESP, until the new ESP IV as stipulated to
10 here in the settlement, until that one is approved
11 and in effect.

12 Q. Okay. So the answer to my question is
13 yes?

14 A. Well, not completely, no. I think it
15 would until ESP IV is in effect.

16 Q. Okay. And when -- when you -- under the
17 settlement when do you anticipate filing for ESP IV?

18 A. On page 45 of the Stipulation there is a
19 requirement that DP&L shall file the application for
20 ESP IV no later than October 1, 2023, to replace ESP
21 I and there are further requirements surrounding that
22 ESP IV and charges it cannot contain.

23 Q. Okay. All right. So can you tell me --
24 and so we just discussed that your electric sec -- or
25 your, DP&L's Electric Security Plan 1 was adopted as

1 a part of the 08-1094 case, I believe. Now, how
2 involved have you been in those proceedings?

3 A. I was involved in -- when it was
4 approved, when DP&L reverted to ESP 1 and it was
5 approved, I was involved then.

6 Q. Okay. And so -- so would you say you've
7 been involved in -- were you involved initially back
8 when it was approved in, I believe it was, like 2009
9 or 2010, around that time frame?

10 A. The first time it was approved?

11 Q. Yes.

12 A. No, I don't believe I was.

13 Q. Okay. So are you aware of whether ESP I
14 was initially approved as part of the settlement
15 between DP&L and other parties to that proceeding?

16 A. I think that's true, but I wasn't
17 involved in those discussions.

18 Q. Okay. Have you reviewed the settlement
19 in the ESP I proceeding?

20 A. I have. It's been a while.

21 Q. Okay. And are you aware of whether the
22 OCC was a signatory to that proceeding?

23 A. I don't remember.

24 Q. Okay.

25 MS. O'BRIEN: Your Honors, at this point

1 I would like to mark OCC Exhibit 8 and -- yeah, which
2 is the ESP I Stipulation and Recommendation dated
3 February 24, 2009.

4 EXAMINER WILLIAMS: And that's how that
5 was marked when you filed your exhibit list earlier,
6 correct?

7 MS. O'BRIEN: Yes, that's correct.

8 EXAMINER WILLIAMS: So marked.

9 (EXHIBIT MARKED FOR IDENTIFICATION.)

10 MS. O'BRIEN: Okay.

11 Q. (By Ms. O'Brien) Ms. Schroder, do you
12 have a copy of that available?

13 A. I do. I am opening it now.

14 Q. Okay. That's fine. Now, if you could
15 turn to page 5 of the settlement -- this settlement
16 and let me know when you are there. Are you there
17 yet?

18 A. No. Actually I was curious regarding the
19 OCC signature, so I was flipping past that on my way.

20 Q. Oh, that's fine.

21 A. You said page 5?

22 Q. Yeah. When you are done, if you could
23 refer to page 5.

24 A. Okay. I'm at page 5.

25 Q. Okay. And you'll see on this page there

1 are terms and conditions related to DP&L's advanced
2 metering infrastructure and SmartGrid. Do you see
3 these?

4 A. Yes.

5 Q. Okay. And you just testified obviously
6 DP&L is currently operating under the ESP I plan,
7 correct?

8 A. Well, I will say it may not be exactly
9 the ESP I that was approved in '08. It was the ESP I
10 as approved. We are calling it ESP I, but our
11 current ESP is the one that was approved December 18,
12 2019. I understand there are some differences.

13 Q. Okay. And can you tell me what those
14 differences are?

15 A. Not as I sit here today. All of them,
16 you know, for example, there were some market-related
17 items that the Commission thought was appropriate to
18 not change because it may interrupt the market rather
19 than trying to attempt to go back to what was in
20 place in 2008 versus what was in place in 2019.

21 Q. Okay. What else?

22 A. That's just an example. I don't know all
23 the differences today as I sit here.

24 Q. Okay. Was anything changed with respect
25 to AMI and Smart Grid?

1 A. No, not that I can think of.

2 Q. Okay. So would you agree with me that
3 these provisions that appear here are still
4 applicable to DP&L?

5 A. I would probably rely on counsel to make
6 sure of that, but from a regulatory perspective, I
7 think so.

8 Q. Okay. Now, if you take a look at
9 provision 4c, this provision discusses DP&L's
10 infrastructure investment rider; is that correct?

11 A. Yes.

12 Q. Okay. And do you see the provision here
13 that states "This IIR rate will recover any prudently
14 incurred costs related solely to the Company's AMI
15 and/or Smart Grid approved plans"?

16 A. Yes, I see that sentence.

17 Q. Okay. And can you tell me when DP&L
18 first filed the IIR tariff with the PUCO?

19 A. No. I don't know.

20 Q. Is it currently on file with the PUCO?

21 A. Yes, it is.

22 Q. Now, is it your understanding that DP&L
23 was required under these settlement terms and
24 conditions to file with the PUCO independent business
25 case proposals with respect to AMI and Smart Grid?

1 A. Can you repeat that, please?

2 Q. Is it your understanding that DP&L was
3 required as part of these provisions on this page to
4 file with the PUCO independent business case
5 proposals for both AMI and Smart Grid?

6 A. Yes, I do understand that and that is
7 what DP&L did in its 2018 filing.

8 Q. And by 2018 filing, what filing are you
9 referring to?

10 A. The application for what we've been
11 calling the Smart Grid plan in 18-1875.

12 Q. Okay. Now, we'll circle back to that,
13 but you understand -- do you understand that -- under
14 the provisions here that the business cases that
15 were -- were -- were to include projected reliability
16 impacts from full Smart Grid deployment?

17 A. Can you point me to that?

18 Q. If you look at -- if you look at 4b here,
19 the second sentence, it says "The analysis shall
20 contain -- shall include projected reliability
21 benefits that will result from full Smart Grid
22 deployment."

23 A. Yes, I see that. That's also what we did
24 in our filing in 2018 as well as updated for the
25 settlement.

1 Q. Okay. Well, let's move -- let's jump
2 ahead then. Let me -- if you just give me a second
3 here so I can pull the 2018 application. Give me one
4 second.

5 Okay. Can you point me to --

6 MS. O'BRIEN: Let me go ahead and mark --
7 OCC would like to mark what's OCC 74. And that is
8 DP&L's application for approval of this plan, the
9 modernized distribution grid, and that's OCC -- OCC
10 74 is what's reflected on our Excel spreadsheet that
11 we sent.

12 EXAMINER WILLIAMS: So marked.

13 (EXHIBIT MARKED FOR IDENTIFICATION.)

14 MS. O'BRIEN: Okay. Let's also go ahead
15 and mark what's reflected on our Excel spreadsheet as
16 OCC 75 and this is the schedules and workpapers
17 attached to the application.

18 EXAMINER WILLIAMS: Waiting for my
19 computer to catch up. Also marked.

20 (EXHIBIT MARKED FOR IDENTIFICATION.)

21 Q. (By Ms. O'Brien) Okay. Okay.
22 Ms. Schroder, do you have these documents available
23 to you?

24 A. This is the entire Smart Grid
25 application?

1 Q. Well, I've marked the application. I've
2 also marked the schedules and the workpapers. My
3 understanding DP&L is not calling the witnesses that
4 provided testimony in support of the application so
5 for right now what I have marked are these two
6 documents.

7 A. Okay. I have not opened it yet. Do I
8 need to open one of these?

9 Q. Yes. If you could, please.

10 A. Could you point me again to which exhibit
11 of OCC that it is?

12 Q. It's OCC 74 which is the application
13 itself and then also OCC Exhibit 75 which is the
14 schedules and the workpapers.

15 MR. IRELAND: Excuse me, Angie. This is
16 Jeff Ireland. Are you going to start with one versus
17 another, or are you going to do them simultaneously?

18 MS. O'BRIEN: I am going to ask her some
19 questions about that because -- so I am not doing one
20 versus the other right now, so I guess I don't
21 understand your question.

22 MR. IRELAND: Well, I am only -- I'm
23 sorry.

24 MS. O'BRIEN: Oh, that's okay.

25 MR. IRELAND: I am asking because I can

1 only open one at a time so.

2 MS. O'BRIEN: Well, let me do this, when
3 Ms. Schroder has them available -- well, we can do it
4 this way.

5 Q. (By Ms. O'Brien) Ms. Schroder, can you
6 show me where in either the application or the
7 schedules and workpapers it's -- it reflects the
8 projected reliability impact that will result from
9 the full Smart Grid deployment?

10 A. The projected benefits are shown in the
11 cost/benefit analysis that was done.

12 Q. Okay. And --

13 A. That was supported by a couple of
14 different witnesses so, for example, the benefits
15 were supported originally by two different witnesses,
16 Witness Hall and Witness Hulsebosch, and the costs
17 were supported by a number of other witnesses. And
18 there was a cost/benefit study done and that study
19 was updated as part of the Stipulation. And I know
20 that was shared with the parties. I don't know the
21 number of that exhibit, but I have that in front of
22 me.

23 Q. What --

24 EXAMINER WILLIAMS: Ms. O'Brien, as we
25 are proceeding, I hate to interrupt you. You marked

1 as 75 exhibits and schedules -- or schedules and
2 workpapers. It looks like that's supposed to be 73.
3 Can you check your records?

4 MS. O'BRIEN: Okay.

5 EXAMINER WILLIAMS: 75 is actually an
6 entry.

7 MS. O'BRIEN: I'm sorry. I must have
8 written it wrong. Yes, you are correct. It's 73.

9 EXAMINER WILLIAMS: All right.

10 MS. O'BRIEN: I apologize about that.

11 EXAMINER WILLIAMS: We will amend the
12 identification then to be identifying OCC Exhibit 73
13 is the exhibit schedules and workpapers.

14 (EXHIBIT MARKED FOR IDENTIFICATION.)

15 Q. (By Ms. O'Brien) Okay. So can you tell
16 me specifically how the Stipulation modifies the
17 cost/benefit analysis that was presented in the
18 schedules and the workpapers and in the application?

19 A. There were a number of updates, most
20 significantly the reduction in the investment. So
21 the Smart Grid application contained 866.9 million of
22 capital and O&M proposed and the settlement was
23 reduced to 267.6 million of capital and O&M, that's
24 capped at that amount so that the time -- the
25 timeline was reduced in terms of the timeline of the

1 investment, the total dollar amount of the
2 investment, and the O&M forecasted was reduced.

3 So that -- that's probably the major
4 adjustment. There may have been some others in that
5 but it was intended to update the cost/benefit
6 analysis to align with the stipulation and the
7 particulars that the parties have agreed to.

8 Q. Okay. You would agree with me though
9 there are no workpapers or schedules to support the
10 costs -- the updated cost/benefits summary that are
11 attached to the Stipulation; is that right?

12 A. No, I don't agree with that. I know that
13 we provided the cost/benefit analysis, the business
14 case, the total summary of all that in discovery, and
15 then I know we provided it again, the updated version
16 of schedules and workpapers that were aligned with
17 the cost/benefit analysis with the Stipulation.

18 Q. Where in the Stipulation are they is what
19 I am asking you. You say --

20 A. We haven't --

21 Q. Okay. I'm sorry. I didn't mean to cut
22 you off.

23 A. I understood your question to not be if
24 it is in the Stipulation, but we did redo it, and it
25 was provided to parties.

1 Q. Okay. But it's not part of the
2 Stipulation; is that correct?

3 A. No. I would disagree with that. It
4 certainly supports the Stipulation.

5 Q. Okay. Can you point me --

6 EXAMINER WILLIAMS: Wait. One at a time.
7 I'm sorry. Ms. O'Brien, ask your question. And
8 then, Ms. Schroder, wait for her to finish asking her
9 question and then respond accordingly, please.

10 Q. (By Ms. O'Brien) Okay. Can you point me
11 to where in the settlement, the Stipulation and
12 Recommendation or its supporting exhibits it
13 describes how the application cost/benefit analysis
14 was modified?

15 A. I think the words of how it was modified
16 are not in the Stipulation. I think the result of
17 that cost/benefit analysis and a summary of that is
18 included in the Exhibit 4 and there are a number of
19 other places in the settlement that incorporates
20 those but there are a number of schedules and
21 workpapers. All of those are not included in the
22 page, for example, of the Stipulation, but I think
23 they incorporate the content of the SmartGrid pieces
24 of the Stipulation, and they are summarized in
25 Exhibit 4.

1 Q. Okay. So if someone were to review the
2 Settlement and Stipulation and its supporting
3 exhibits, they wouldn't be able to tell exactly how
4 the cost/benefit analysis changed from the
5 application as it was filed in December 2018; is that
6 correct?

7 A. No, I disagree with that. If it were a
8 party to the case, I think they would have that
9 information. As I mentioned, we provided them
10 cost/benefit analysis details, all of the schedules
11 and workpapers in context of discovery that would
12 have aligned with the application, and then we also
13 provided the updated schedules and workpapers that
14 align with the settlement to the intervening parties,
15 so an intervening party could do that themselves and
16 see the difference.

17 Q. Okay. But you are not sponsoring
18 testimony today with respect to those modifications,
19 are you, specifically with respect to those
20 modifications?

21 A. Some of those modifications because I am
22 supporting the updated cost to benefit analysis, and
23 some of the changes from our application, as I
24 mentioned before, a significant one in terms of the
25 reduction in investment and the O&M that the Company

1 would be making as part of Phase I, some of those
2 adjustments I do sponsor.

3 Q. Okay. Let's see, hold on. Let me just
4 find where I put my notes, the pad. Okay. Now,
5 going back to the application that was filed in
6 December of 2018, at the time DP&L filed that
7 application it was operating under a different
8 electric security plan, right?

9 A. Yes. Before we reverted to ESP 1, we
10 were operating under ESP III.

11 Q. Okay. And do you recall whether the ESP
12 III was approved by the PUCO as a result of the
13 settlement between the parties to the case?

14 A. Yes, it was.

15 Q. Okay. And do you recall if OCC was a
16 signatory party to that settlement?

17 A. I don't believe they were.

18 Q. Okay. And do you have the ESP III
19 Amended Stipulation available to you?

20 A. If it's one of your exhibits, I can get
21 to it.

22 MS. O'BRIEN: Okay. Well, I will go
23 ahead and mark OCC 10 and if you could pull that up
24 that would be great.

25 EXAMINER WILLIAMS: It's so marked.

1 (EXHIBIT MARKED FOR IDENTIFICATION.)

2 A. Yes, I have access to it now.

3 Q. Okay. Can you turn to page 7.

4 A. Okay. I'm there.

5 Q. Okay. And here I think you'll see
6 discussion regarding the Smart Grid Rider, which I'll
7 refer to as the SGR, and also the distribution
8 infrastructure modernization plan. Now, you would
9 agree with me that these provisions in the ESP III
10 don't now apply to Smart Grid plan; is that correct?

11 A. It's my understanding that none of the
12 ESP III applies.

13 Q. Okay. And that's because DP&L withdrew
14 from ESP III, right?

15 A. In part. I think it doesn't apply today
16 because of the Commission approved DP&L's reversion
17 to ESP I, so our current ESP is what I have been
18 calling ESP I.

19 Q. Okay. And we've already established that
20 the AMI and Smart Grid provisions of the ESP I
21 settlement were not modified as part of the
22 Commission's order, right?

23 A. Not that I am aware of.

24 Q. Okay. And you would agree with me that
25 one of the primary modifications for the Smart Grid

1 plan from when it was filed in December of 2018 to
2 the time that the settlement was filed was the way
3 that DP&L would recover certain components of the
4 Smart Grid plan, right?

5 MR. IRELAND: I'll object to the form,
6 your Honor.

7 Q. Okay. I'll rephrase.

8 EXAMINER WILLIAMS: Thank you.

9 Q. So you would agree with me under the ESP
10 III settlement, the Smart Grid -- as initial -- okay.
11 Let me back up.

12 When DP&L filed the Smart Grid plan in
13 2018, did it contemplate recovering certain
14 components of the Smart Grid plan through the Smart
15 Grid Rider?

16 A. Yes. I think so.

17 Q. Okay. And, now, as part of the
18 settlement, the DP&L plans to recover certain
19 components of the Smart Grid plan through the
20 Infrastructure Investment Rider; is that correct?

21 A. Yes, that's right.

22 Q. Okay. And that's the rider mechanism
23 that we just discussed that was referenced in the
24 settlement -- the ESP I settlement, right?

25 A. Yes. That exists today within our

1 current ESP.

2 Q. Okay. Now, we -- I think you just -- you
3 just talked a little bit about some of the ways --
4 some of the ways that the settlement modifies the
5 Smart Grid plan as it was filed in December 2018.
6 What other ways is it modified?

7 A. There were operational O&M savings that
8 were estimated in the application and some of those
9 estimates were intended to be updated and provided to
10 customers through incorporation in the next rate
11 case. And instead through the Stipulation those
12 amounts were agreed to as certain dollar amounts
13 instead of estimates as well as intended to be
14 provided to customers incorporated through the IIR.

15 There were no audit procedures proposed
16 in the application for DP&L's investment. The
17 Stipulation has stringent requirements regarding the
18 DP&L's investments and expenditures for annual audits
19 to be performed. The application proposed CIF, a new
20 CIF system, and that CIF system would be recovered in
21 the rider on an ongoing basis.

22 Instead a concession by DP&L as part of
23 the settlement was that DP&L would still honor the
24 commitment to invest in the CIF as well as the
25 related benefits to customers but that that cost

1 recovery would be delayed until the rate case.

2 DP&L's implementation of Volt/VAR optimization would
3 be accelerated in the Stipulation compared to in the
4 application, so customers could receive those reduced
5 costs earlier.

6 DP&L had proposed to own electric vehicle
7 infrastructure in the application. That has been
8 removed in the settlement. There are a number of
9 economic development programs that are proposed in
10 the settlement that were not included in the
11 application. There is a commitment to file ESP IV by
12 a date certain and that ESP IV would not have certain
13 nonbypassable charges included in it. That was not
14 in the application.

15 Q. Is there anything else?

16 A. The smart thermostat program -- yeah,
17 there are a number of other things. I could
18 continue. There are a number of other commitments
19 that are going to be funded with shareholder dollars
20 instead of by customer funds. Many of those are tied
21 to economic development and other state policies,
22 programs for low income residential customers,
23 significant commitments regarding customer education
24 and some of that education targeted toward certain
25 groups. I think that's the majority of them. There

1 may be several others.

2 Q. Okay. Now, you know, a lot of -- a lot
3 of the items that you mentioned don't -- to me -- I
4 guess what I am struggling with a lot of those don't
5 sound to me like specific modifications to the
6 application that was filed in December. So again, I
7 am going to go back to OCC 73, the schedules and
8 workpapers that were filed with the application. And
9 again, can you tell me specifically which of these
10 schedules and workpapers were modified as a result of
11 the settlement?

12 A. I can point you to some of them. One of
13 the examples I just mentioned was that the VOLT/VAR
14 optimization was accelerated, so some of those
15 investments occur earlier than in the application.

16 Q. Okay. And can you tell me what schedule
17 or workpaper that is?

18 A. Sure. That's in Schedule or Workpaper --
19 Workpaper 2.4.

20 Q. Okay. What else?

21 A. Workpaper 1.1 contains capital costs for
22 smart meters. The Stipulation proposes to reduce the
23 amount of investment in AMI to approximately
24 95 percent of what was included in the application.
25 That's showing in Workpaper 1.1.

1 Q. Okay.

2 A. Workpaper 2.1 contains capital costs for
3 distribution automation infrastructure. That was
4 reduced in the settlement compared to the application
5 such that the settlement contains approximately
6 20 percent of DP&L's circuit versus 47 percent of
7 DP&L's circuit as was contained in the application.

8 Workpaper 2.2 contains investments
9 related to substation automation. Similarly, the
10 substation automation investment was reduced compared
11 to the application such that the Stipulation contains
12 about 30 substations that will be automated compared
13 to the 97 that were included in the application.

14 There are others -- other workpapers
15 where the costs were removed. As I mentioned, the
16 CIF was originally part of the application to be
17 recovered on an on going basis through a rider and a
18 quarterly basis.

19 Now, the CIF costs investment as well as
20 O&M and related supporting systems are all deferred
21 to be recovered in the next rate case. Some of those
22 would be Workpaper 1.2 for meter data management
23 systems. Workpaper 1.3 contains CIF costs.
24 Workpaper 1.4 contains costs related to meter asset
25 management systems. Workpaper 2.7 contains costs

1 related to the mobile workforce management system.
2 Workpaper 3.2 contained the customer portal and
3 mobile app. costs. Workpaper 3.5 contained costs
4 related to the IDR. Workpaper 3.6 contained costs
5 related to CRM.

6 And as I mentioned, all of these were
7 included in the application to be recovered on a
8 quarterly basis but as part of the settlement will be
9 recovered later in a rate case instead.

10 Q. Okay. So you just went through a number
11 of modifications to the various workpapers, but none
12 of those modifications were attached to the
13 Stipulation, were they?

14 A. As attachments, no.

15 Q. Where are they in the Stipulation? Where
16 are they specifically? In other words, what I am
17 getting at is with the application, DP&L filed
18 schedules and workpapers. I guess my question is why
19 didn't DP&L file updated schedules and workpapers
20 with the Stipulation?

21 MR. IRELAND: I am going to object to
22 that, your Honor.

23 EXAMINER WILLIAMS: If she knows, she can
24 answer.

25 A. I don't know from a process standpoint

1 why they are not filed with the Stipulation or
2 attached. Just perhaps out of just efficiency
3 because of the bulk and nature of how many schedules
4 and workpaper there are that support the Stipulation,
5 but I do understand those were provided to the
6 intervening parties, so they have this support.

7 Q. But again, to the application, if -- DP&L
8 was able to file schedules and workpapers supporting
9 the application with this initial filing, correct?

10 A. We did file significant detail with the
11 application, yes.

12 Q. Okay. And that same detail is not
13 reflected in the Stipulation; is that correct?

14 A. No. I disagree with that. I think that
15 detail is reflected in the Stipulation. I would
16 agree with you that there are not attachments that
17 contain all of the schedules and workpapers though.

18 Q. Okay. Thank you. Okay. Let me just
19 back up because we skipped ahead a little bit. Okay.
20 Now, if you could grab the Stipulation and move to
21 Exhibit 2 of the Stipulation and let me know when you
22 are there.

23 A. Okay. I'm there.

24 Q. Okay. Let me get there.

25 EXAMINER WILLIAMS: Ms. O'Brien, can we

1 take a 10-minute break? Is that okay? Is it
2 interrupting a train of thought you are at right now,
3 or is it okay?

4 MS. O'BRIEN: No, that's fine. It's
5 fine.

6 EXAMINER WILLIAMS: Okay. We will go
7 ahead and go off record and come back at 3:45.

8 (Recess taken.)

9 EXAMINER WILLIAMS: Karen, go ahead and
10 put us back on the record.

11 Thank you, Ms. O'Brien. We will resume
12 your questioning at 3:45.

13 Q. (By Ms. O'Brien) Okay. Ms. Schroder, did
14 you -- I think before we went on break, I asked you
15 to turn to Exhibit 2 to the settlement. Are you
16 there?

17 A. Yes, I'm there.

18 Q. Okay. Now, this exhibit showed the
19 revenue requirement over the four years of DP&L's
20 proposed Smart Grid Plan 1; is that correct?

21 A. Yes, our estimate for Phase 1.

22 Q. Okay. Now, you would agree with me
23 though that there are certain costs that DP&L will
24 have that would need to occur over a longer period of
25 time, right?

1 MR. IRELAND: I think it's a little
2 vague, your Honor.

3 EXAMINER WILLIAMS: Ms. O'Brien, can you
4 clarify the question?

5 Q. (By Ms. O'Brien) Okay. DP&L has
6 depreciation costs, correct?

7 A. Yes. We have depreciation expense for a
8 number of our assets, related to a number of our
9 assets.

10 Q. Okay. And you want to recover those
11 costs, right?

12 A. Generally, yes.

13 Q. Okay. And won't recovery costs like
14 depreciation take longer than four years?

15 A. I think that's a broad question, but if
16 you mean the costs that are here, I think there are
17 costs and benefits that are not showing on this
18 exhibit.

19 Q. Okay. What costs and benefits aren't
20 showing on the exhibit?

21 A. Well, the exhibit is only showing our
22 view, our best estimate for Phase 1.

23 Q. Okay.

24 A. Phase 1.

25 Q. But you just said it -- you just said

1 there are costs and benefits that aren't reflected on
2 that, and I am asking you what costs and benefits
3 aren't reflected on it.

4 A. In our costs/benefits analysis that we
5 did took a two-year view which I understand is
6 typical in the industry so that's incorporated into
7 our cost/benefit analysis. But Exhibit 2 is merely
8 trying to do an estimate of the revenue requirements
9 for the four years included in Phase 1 so that we can
10 get an estimate of the potential bill impacts for
11 customers.

12 Q. Okay. So I guess -- I guess what I am
13 trying to get at is why doesn't Exhibit 2 provide the
14 revenue requirements over 20 years similar to the
15 cost/benefit projection that's reflected in
16 Exhibit 4?

17 A. I think that was part of the negotiated
18 settlement of what would be included in the exhibits.

19 Q. Okay. But I don't think that's exactly
20 answering my question. I mean, wouldn't it make
21 sense to do the revenue requirement out 20 years to
22 get more accurate information?

23 A. No, no. I think --

24 Q. Why not?

25 A. -- if we were to attempt -- if we were to

1 attempt to try to forecast all the details that are
2 involved in a revenue requirement for 20 years, I
3 think it would be less accurate.

4 Q. Okay. I want to switch gears a little
5 bit and can you get your testimony and specifically
6 if you could turn to page 12 and 13 of your
7 testimony. And let me know when you are there.

8 A. 12 and 13?

9 Q. Yes.

10 A. Yes, I'm there.

11 Q. Okay. Okay. Now, here starting on page
12 12 and going onto page 13, you list the 19 parties
13 that were signatories to the settlement. And you
14 explain they represent a wide range of interests; is
15 that correct?

16 A. Yes.

17 Q. Okay. Now, you indicated that you are
18 testifying today as a regulatory expert, so in your
19 regulatory expertise, would you agree with me that
20 when a company or an organization wants to
21 participate as a party in a PUCO proceeding, they
22 typically file a Motion to Intervene?

23 A. Yes, that's my understanding. They would
24 file a Motion to Intervene if they are interested.

25 Q. Okay. And you would agree with me

1 obviously that each of the signatory parties that
2 signed the settlement filed Motions to Intervene in
3 the Smart Grid case, right?

4 A. I'm sorry. Can you repeat that?

5 Q. You would agree with me that each of the
6 signatory parties, the 19 signatories parties, I
7 guess with the exception of PUCO Staff, filed a
8 Motion to Inter -- and DP&L because it was DP&L's
9 application, filed a Motion to Intervene in the
10 SmartGrid case.

11 A. Yes, I think that's right.

12 Q. Okay. So -- and you would also agree
13 with me that the Smart Grid case, the MFA SEET case
14 in 2018 and the 2019 SEET case all started out as
15 separate proceedings; is that right?

16 A. Yes. They all began as separate
17 applications.

18 Q. Okay. And at some point along the line,
19 they were consolidated; is that correct?

20 A. I don't know if they were formally
21 consolidated at proceeding, but I do know as a
22 package they were all included in resolving the
23 issues regarding -- in all four cases as part of the
24 Stipulation.

25 MS. O'BRIEN: Okay. So while -- at this

1 point, your Honor, I would like to mark OCC -- which
2 I believe is actually OCC 75. Let me just get my
3 list here. Sorry. My eyesight is horrible these
4 days. And that should be the Commission's
5 October 27, 2020, entry in this case.

6 EXAMINER WILLIAMS: You are correct, and
7 it is so marked.

8 (EXHIBIT MARKED FOR IDENTIFICATION.)

9 MS. O'BRIEN: Okay. Excellent.

10 Q. (By Ms. O'Brien) And, Ms. Schroder, do
11 you have that available to you?

12 A. Yes, I do.

13 Q. Okay. And can you flip to page -- okay.
14 If you could flip to page 6 of the entry and refer to
15 paragraph 15.

16 A. Okay. I'm there.

17 Q. Okay. And do you see in paragraph 15
18 here where it says "The attorney examiner determines
19 that the Smart Grid Case, the 2018 SEET Case, the
20 2019 SEET Case, and the Quadriennial Review Case
21 should be consolidated for purposes of considering
22 the Stipulation"?

23 A. I see that.

24 Q. Okay. And if you flip to the end here, I
25 think -- well -- oh. If you flip to the first page,

1 it's got the date of October 27, 2020, on it. Do you
2 see that?

3 A. October 27, 2020.

4 Q. Okay. So from this would you agree with
5 me that all four of these cases were consolidated on
6 October 27?

7 A. No. Similar to my prior answer, I don't
8 know legally what that means in terms of they are
9 formally or officially being consolidated, but for
10 purposes of the settlement, we stipulated and have a
11 consolidated settlement and this says that it will
12 be -- they will be consolidated for purposes of
13 considering the Stipulation. I am not an attorney,
14 so I don't know if there are other purposes where
15 they might not be consolidated.

16 Q. Okay. Fair enough. But you would agree
17 with me that up until the settlement was filed, each
18 of these cases was a separate proceeding.

19 A. Yes. I think that's right.

20 Q. Okay. And would you also agree with me
21 that not nearly all of the 19 signatory parties
22 intervened in either the 2018 SEET case or the 2019
23 SEET case?

24 A. I agree not all parties that are parties
25 originally to the Smart Grid case and are parties to

1 this Stipulation were -- intervened originally into
2 each of those SEET cases. However, they have signed
3 onto support each of those SEET cases as well as the
4 Smart Grid case as a consolidated settlement.

5 Q. Okay. And correct me if I am wrong, but
6 I think your testimony before was that when a party
7 has an interest in a -- when a company or an
8 organization has an interest in a proceeding, if it
9 wants to participate as a party, it files a Motion to
10 Intervene in the case; is that correct?

11 A. That's my understanding.

12 Q. Okay. So is it fair to say that if a
13 party had an interest in the 2018 SEET case or the
14 2019 SEET case, it would have filed a Motion to
15 Intervene in each one of those cases?

16 MS. BOJKO: Objection.

17 EXAMINER WILLIAMS: I am going to sustain
18 the objection. I don't know the witness is able to
19 talk about the intent of all the different parties.

20 MS. O'BRIEN: Well, your Honor, I guess
21 if -- first of all, the grounds of the objection
22 weren't -- weren't stated, and if I can just respond,
23 she testified that in her regulatory expertise that
24 parties who are interested in a proceeding typically
25 file a Motion to Intervene. So I guess I'm just

1 asking her if the converse is true. I don't think
2 that that requires her to make a legal conclusion.

3 EXAMINER WILLIAMS: The problem is not
4 the legal conclusion. The problem is you are asking
5 her to testify as to the actions and decisions of
6 other parties she is not a part of or able to speak
7 toward.

8 MR. IRELAND: Your Honor, we would join
9 the objection for that -- on that basis, speculation.

10 EXAMINER WILLIAMS: The objection
11 continues to be sustained.

12 MS. O'BRIEN: Okay.

13 Q. (By Ms. O'Brien) Well, so we established
14 that -- but we did establish your testimony was that
15 if a party is interested in a proceeding -- or
16 interested in participating as a party, it will
17 typically file a Motion to Intervene in the case,
18 right?

19 A. I think that's typically how they do show
20 their interest --

21 Q. Okay.

22 A. -- in participating. They may be
23 interested in the case and not participate, make a
24 different decision, but I think if they are
25 interested in participating they have to be an

1 intervening party.

2 Q. Okay. Fair enough. And I would agree.
3 I mean, party -- I think that in general you can
4 intervene in the case but participate to a different
5 level.

6 MS. BOJKO: Objection. Your Honor, I
7 move to strike counsel's agreement or not agreement
8 of her testimony.

9 MS. O'BRIEN: I will withdraw it.

10 EXAMINER WILLIAMS: All right. We will
11 let you withdraw that.

12 MS. O'BRIEN: I will withdraw.

13 EXAMINER WILLIAMS: Okay. Thank you.

14 MS. O'BRIEN: I will go ahead and
15 withdraw. Okay. Fair enough.

16 Q. (By Ms. O'Brien) Okay. So do you know
17 which of the signatory parties intervened in the 2018
18 SEET case?

19 A. No. I don't remember for sure.

20 MS. O'BRIEN: Okay. Your Honor, I would
21 like to mark OCC 35 which is the case record docket
22 sheet for Case No. 19-1121 EL-UNC.

23 EXAMINER WILLIAMS: So marked.

24 (EXHIBIT MARKED FOR IDENTIFICATION.)

25 Q. (By Ms. O'Brien) Ms. Schroder, if you

1 could take a look at that and let me know when you
2 are ready.

3 A. This is OCC 35?

4 Q. Yes.

5 A. I have it open.

6 Q. Okay. And at the top of your OCC 35,
7 does it say Case Record for 19-1121-EL-UNC?

8 A. Yes, it does.

9 Q. Okay. And we've established that's the
10 2018 SEET case, right?

11 A. Yes, that's right.

12 Q. Okay. Now, if you look, it's on my
13 second page of the printout, if you printed it out,
14 but if you look, you'll see toward the bottom of the
15 list it reflects a date of May 15, 2019, which is the
16 application date for DP&L's application. Do you see
17 that?

18 A. Yes, I see that.

19 Q. Okay. And then on it looks like June 13,
20 you'll see an entry for it looks like OCC's Motion to
21 Intervene, right?

22 A. Uh-huh, yes.

23 Q. Okay. And OCC obviously is not a
24 signatory to the settlement.

25 A. Right.

1 Q. And then next up the list on June 24,
2 2019, do you see an entry there for Motion to
3 Intervene by Ohio Energy Group?

4 A. Yes.

5 Q. Okay. And then next up the list do you
6 see a September 30, 2020, entry for Motion to
7 Intervene from OMAEG?

8 A. Yes.

9 Q. And then do you see next up the list an
10 entry for Motion to Intervene from Kroger?

11 A. Yes, I see that.

12 Q. And then a little further up the list you
13 see on October 16 a Motion to Intervene from
14 Industrial Energy Users of Ohio, IEU?

15 A. Yes.

16 Q. And then further up on October 27, 2020,
17 you see the entry that we just discussed, correct?

18 A. Yes.

19 Q. Okay. So from this docket sheet can you
20 conclude that the only parties that intervened in the
21 2018 SEET case were OEG, the Ohio Energy Group, OMA,
22 Kroger and IEU and OCC?

23 A. That is accurate for the original
24 application.

25 Q. Okay. And which of these parties besides

1 OCC represents the interest of DP&L's residential
2 customers?

3 A. I am not sure who -- the entirety of who
4 they represent but this is a limited view of who is
5 on this settlement. I think the settlement, DP&L
6 certainly represents our residential customers. The
7 Staff does. The Commission does. I don't know if
8 you are looking at the other side in terms of the
9 application, I guess in terms of the application DP&L
10 does.

11 Q. Okay. Well, I think your -- and I'll
12 back up to that because that's a fair point. You --
13 I think you testified that the PUCO Staff and being a
14 signatory to the settlement, they represent both --
15 they balance the interests of the utilities and the
16 customers; is that correct? Is that a fair,
17 accurate -- or fair characterization of your
18 testimony?

19 MR. IRELAND: Objection, your Honor.

20 EXAMINER WILLIAMS: I'll let her answer
21 and explain.

22 A. I think generally they do try to balance
23 and represent all customers including residential
24 customers and balance the interests.

25 Q. But still you would agree with me far

1 less than all 19 parties have signed the Global
2 Settlement, intervened in the 2018 SEET case,
3 correct?

4 MS. BOJKO: Objection, your Honor. That
5 mischaracterizes the entry that was established
6 consolidating the cases.

7 MS. O'BRIEN: Your Honor, if I may
8 respond?

9 EXAMINER WILLIAMS: Please.

10 MS. O'BRIEN: We just -- we just walked
11 through them on the docket sheet.

12 MS. BOJKO: Right. And I objected.

13 MS. O'BRIEN: Before the entry was
14 entered.

15 EXAMINER WILLIAMS: I have heard from
16 you, Ms. O'Brien. Is that you, Ms. Fleisher? Who's
17 got the objections?

18 MS. BOJKO: It's Ms. Bojko. I apologize.

19 EXAMINER WILLIAMS: Thank you, Ms. Bojko.
20 That's okay.

21 MS. BOJKO: Your Honor, I objected in the
22 beginning to the line of questions. There are many
23 reasons why parties may or may not intervene in
24 proceedings, and when she was asking factual
25 questions about the docket sheet, there was really no

1 need to object except for relevancy, I guess, but now
2 she's making statements or asking questions that have
3 a mischaracterization of the procedural schedule that
4 was established and the entry that was established.

5 EXAMINER WILLIAMS: Ms. O'Brien.

6 MS. O'BRIEN: And, your Honor, yeah, I
7 would just respond Ms. Schroder already testified
8 that, you know, only a limited number of parties
9 intervened prior to the entry consolidating the
10 cases. Ms. Schroder testified that the Global
11 Stipulation is supported by 19 parties that have
12 diverse interests.

13 And the point I am just trying to
14 establish is that -- with respect to the 2018 SEET
15 case, very few parties actually had an interest
16 enough in that -- in that proceeding to intervene.

17 MS. BOJKO: Objection, your Honor.
18 That's the part she is drawing conclusions that don't
19 exist. She -- Ms. Schroder can't speak to the
20 interests of the parties and why or why they didn't
21 intervene or intervene before the entry was
22 established. There was no cutoff. They could have
23 intervened after the entry.

24 EXAMINER WILLIAMS: Ms. Bojko, I have
25 what I need. I will sustain the objection.

1 Ms. O'Brien, I believe you've asked and received
2 answers to who did intervene according to that docket
3 sheet.

4 If you have any clarifications you need
5 relative to those facts, I will certainly let you
6 pursue that. Beyond that I am still not going to let
7 you pursue the rationale as to those that had not
8 formally intervened in that case as per that docket.

9 MS. O'BRIEN: Okay. Thank you, your
10 Honor. Okay. Now I would like to mark OCC 36.

11 EXAMINER WILLIAMS: That's the docket
12 sheet -- go ahead.

13 MS. O'BRIEN: Oh, I'm sorry, which is the
14 docket sheet for 20-1041.

15 EXAMINER WILLIAMS: Okay. So marked.

16 (EXHIBIT MARKED FOR IDENTIFICATION.)

17 Q. (By Ms. O'Brien) And, Ms. Schroder, let
18 me know when you have it available.

19 A. I have it.

20 Q. Okay. So again, let's flip to toward the
21 last page.

22 A. Okay.

23 Q. And here -- are you there?

24 A. I'm there.

25 Q. Okay. And, here again, you'll see a

1 May 15, 2020, entry which reflects DP&L's application
2 for the 2019 SEET. Do you see that?

3 A. Yes.

4 Q. Okay. Go a little bit further up the
5 list. You'll see June 4, 2020, which reflects OCC's
6 Motion to Intervene.

7 A. Yes.

8 Q. And next up the list you'll see July 2,
9 2020, which is Kroger's Motion to Intervene.

10 A. Yes.

11 Q. And next up the list is July 2, again
12 July 2, 2020, which is OMA's Motion to Intervene.

13 A. Yes.

14 Q. And further up the list you'll see
15 10-16-2020 which is IEU's Motion to Intervene.

16 A. Yes.

17 Q. Okay. And then you see the October 27,
18 2020, Attorney Examiner entry we just discussed.

19 A. Yes, I see that.

20 Q. Okay. So you would agree with me that
21 this reflects that besides OCC three other parties
22 intervened in the 2019 SEET case, correct?

23 MS. BOJKO: May I hear that question
24 reread, please? This is Kim Bojko.

25 (Record read.)

1 MS. BOJKO: Objection. The docket card
2 can speak for itself but that is not what it says.
3 Again, there was a consolidation of the cases and a
4 new intervention date set and anybody that intervened
5 is considered to have intervened in all the cases, so
6 the question is mischaracterizing the procedural
7 schedule and the docket sheet.

8 EXAMINER WILLIAMS: That's my
9 understanding of what happened in that 10-27 entry as
10 well so the objection is sustained.

11 Ms. O'Brien.

12 Q. (By Ms. O'Brien) Okay. Can you flip back
13 to your testimony on -- go back to page 12 of your
14 testimony.

15 A. Yes. I'm there.

16 Q. Okay. To your knowledge, did the City of
17 Dayton intervene in either 2018 or 2019 SEET cases?

18 A. Given what we just discussed, I think my
19 understanding of what was just stated is that they
20 did because the cases are consolidated.

21 Q. Can you show me on this docket sheet
22 where their intervention was, on either the 2018 or
23 2019 docket sheet where the City of Dayton's Motion
24 to Intervene was?

25 MS. BOJKO: Objection. It's Kim Bojko

1 again. Your Honor, this line of questioning is
2 irrelevant. The docket sheet speaks for itself and
3 whether a name appears before or after the entry
4 consolidating is irrelevant.

5 EXAMINER WILLIAMS: I am going to sustain
6 the objection again.

7 Ms. O'Brien.

8 MS. O'BRIEN: Okay. I'll move on. Can I
9 have just a minute, please?

10 EXAMINER WILLIAMS: Yeah. You can take
11 more if you want. Need 5 or 10 or just need a
12 minute?

13 MS. O'BRIEN: I just need a minute to go
14 through -- to go through my notes.

15 EXAMINER WILLIAMS: Okay. Okay. Yeah,
16 let's go ahead and go off the record.

17 (Discussion off the record.)

18 EXAMINER WILLIAMS: All right. Karen,
19 let's go back on the record, please.

20 Q. (By Ms. O'Brien) Okay. Ms. Schroder, can
21 you grab the settlement for me, please. And when you
22 have it, turn to page 45.

23 A. I didn't hear which page, I'm sorry.

24 Q. 40 -- I'm sorry, 45.

25 A. Okay. I'm there.

1 Q. Okay. And right before Section 20, do
2 you see a section there that's preceded by three
3 little Is?

4 A. Yes.

5 Q. Can you review that for me.

6 A. Okay. I've read that.

7 Q. Okay. And this provision says in
8 consideration of this Stipulation as a package and
9 only for that purpose, the Signatory Parties who have
10 intervened or moved to intervene in Case No. 19-1121
11 and 20-1041 recommend that the Commission approve
12 DP&L's applications in these cases conditioned on the
13 Commission's approval of this Stipulation without
14 modification. The Signatory Parties who have not
15 intervened or moved to intervene in those cases shall
16 not intervene or move to intervene in those cases and
17 take no position on DP&L's application in those
18 cases.

19 So based on that, is it fair to say that
20 not all 19 parties to the Global Stipulation support
21 the 2018 and 2019 SEET cases?

22 A. No. I don't think that's fair. I don't
23 know the fact that they signed the Stipulation
24 indicates that they are either taking no position or
25 that they support. It's clear they don't disagree.

1 Otherwise, they would not have signed the Stipulation
2 that contained --

3 Q. Okay. So not all 19 parties take a
4 position with respect to the 2018 and 2019 SEET case,
5 correct?

6 A. I don't know.

7 Q. Well, what do you understand -- I mean,
8 what do you understand "take no position on DP&L's
9 applications" in those cases to mean? What's your
10 understanding of that term?

11 A. I think taken in the context here, the
12 entire paragraph, those that intervene recommend that
13 the Commission approve the application in those cases
14 conditioned on the approval of this Stipulation. So
15 those that didn't intervene, they either support
16 DP&L's application in those cases, or they take no
17 position, but I am not in a position to know which
18 parties support this application of DP&L and which
19 take no position.

20 Q. Okay. So just to sum up, not all 19
21 signatory parties take a position with respect to
22 DP&L's 2018 and 2019 SEET cases, right?

23 MS. BOJKO: Objection. It's Bojko again.
24 I think that's speculation and mischaracterizes her
25 prior comments.

1 MR. IRELAND: I would join the objection,
2 your Honor.

3 EXAMINER WILLIAMS: All right. I am
4 going to let Ms. Schroder -- give her one more chance
5 to read what the document says, which is the last
6 sentence there in 19c iii, and if she has any further
7 explanation beyond what's written there, we will let
8 her explain. If not, then we will move on.

9 Ms. Schroder.

10 THE WITNESS: Thank you, your Honor. The
11 last sentence reads "The Signatory Parties who have
12 not intervened or moved to intervene in those cases
13 shall not intervene or move to intervene in those
14 cases and take no position on DP&L's applications in
15 those cases."

16 EXAMINER WILLIAMS: Do you have any
17 insight other than what's written in the document?
18 Go ahead.

19 THE WITNESS: I apologize. I do. My
20 interpretation of that sentence in the context of
21 this paragraph and of the broader settlement in which
22 all those 19 parties signed is that those parties
23 either have no interest in that case, take no
24 position in that case, or they support DP&L's
25 application.

1 EXAMINER WILLIAMS: Thank you.

2 Ms. O'Brien, let's move on.

3 Q. (By Ms. O'Brien) Can you turn to page 6
4 of the settlement and let me know when you are there.

5 A. Okay. I'm there.

6 Q. Okay. And at the top do you see a
7 paragraph that's entitled paragraph c and it starts
8 out "If DP&L does not file a distribution rate case by
9 January 1, 2025, then the recovery of the costs
10 associated with this Stipulation shall cease recovery
11 and the IIR shall be set to zero"?

12 A. Yes, I see that.

13 Q. Okay. Now, you would agree with me that
14 since the settlement was filed in this case, and I
15 believe that date was October 23, 2020, DP&L filed an
16 application for an increase in base distribution
17 rates; is that correct?

18 A. Just checking the date of the filing of
19 the settlement. On October 23, was that part of the
20 question?

21 Q. No. My question was since the filing of
22 the settlement, has DP&L filed an application for an
23 increase in its base distribution rate?

24 A. Yes.

25 Q. Okay. And as the Managing Director of

1 Regulatory Affairs with DP&L, are you familiar with
2 that application?

3 A. Generally, yes.

4 Q. Okay. Now, can you tell me, does the
5 filing of this base distribution rate case satisfy
6 this provision in the settlement requiring DP&L to
7 file the base distribution rate case?

8 A. I think it's up to the Commission to
9 ultimately determine if it's satisfied once approved.
10 My interpretation is yes given the dates you just
11 mentioned.

12 Q. Okay. So it's -- it's DP&L's position
13 that this satisfies this provision of the settlement.
14 Is it also true that DP&L will be able to recover
15 costs under the IIR for some similar replacement
16 rider until the DP&L files another rate case in the
17 future?

18 MR. IRELAND: Objection, your Honor.

19 EXAMINER WILLIAMS: I will let her
20 testify as to her understanding of what DP&L can do
21 and how long the IIR proceeds. Do you need the
22 question, Ms. Schroder?

23 THE WITNESS: It sounded like two or
24 three parts actually. Can you repeat it back?

25 Q. (By Ms. O'Brien) I can rephrase to make

1 it more clear. Okay. So we just established that
2 DP&L has filed a base distribution rate case since
3 the filing of the settlement, right?

4 A. Correct.

5 Q. Okay. So provision c here requires -- it
6 says if DP&L does not file a base distribution rate
7 case by January 1, 2025, then the recovery under the
8 IIR will cease and the IIR will be set at zero; is
9 that a fair characterization of what the settlement
10 says?

11 A. Yes.

12 Q. Okay. So my question is does the DP&L's
13 filing of the base distribution rate case satisfy
14 this provision?

15 A. Yes. I think -- I believe I answered
16 this so what I was saying was that I think ultimately
17 that's the Commission's determination is it satisfied
18 or not. My interpretation is that is.

19 Q. Okay. So if your interpretation is that
20 this provision is satisfied, does that mean that DP&L
21 can continue recovering costs under the IIR or a
22 similar replacement rider that may be adopted as a
23 part of another security plan in the future?

24 MR. IRELAND: I renew my objection, your
25 Honor.

1 EXAMINER WILLIAMS: I will let
2 Ms. Schroder answer the question to the extent she
3 understands and has insight.

4 A. I don't know the outcome of the -- the
5 next ESP. As I mentioned, in the Stipulation DP&L
6 has an obligation to file for an ESP IV. I don't yet
7 know what will be contained in that ESP IV and/or
8 what might occur to the IIR.

9 Q. Okay. Does the DP&L contemplate
10 recovering costs under the IIR or another similar
11 replacement rider if the IIR goes away until it files
12 the next rate case?

13 MR. IRELAND: I object to that, your
14 Honor. Not only is it speculative but I think it
15 also calls into question legal advice that may be
16 given to the company.

17 MS. O'BRIEN: Your Honor, first, your
18 Honor, she's the Managing Director of Regulatory
19 Affairs for DP&L. I don't think it's out of -- out
20 of the realm to ask her whether she thinks that this
21 allows DP&L to continue including cost for Smart Grid
22 components under the IIR or similar replacement
23 rider.

24 EXAMINER WILLIAMS: I agree with the
25 propriety of the question. To the extent

1 Ms. Schroder knows, I think it's certainly within her
2 domain to testify as to what the impacts of the IIR
3 rider are in light of the filing of the base
4 distribution case, so I will let you answer the
5 question to the extent you have insight.

6 THE WITNESS: Thank you, your Honor. I
7 don't know how long DP&L will charge customers under
8 the IIR if it's approved as shown here in the
9 Stipulation. The interrelationship between the IIR
10 and any rate case or any future ESP, I believe there
11 are a lot of variables there, so I don't know how
12 long the IIR as positioned here in this Stipulation
13 would continue.

14 Q. Okay. And it's your understanding that
15 DP&L's recent rate case application has a test year
16 for the 12-month period beginning June 1, 2020?

17 A. Yes, that's my understanding.

18 Q. Okay. And a date certain of June 30,
19 2020?

20 A. Yes.

21 Q. So is it fair to say the benefits to
22 customers resulting from DP&L's Smart Grid Plan Phase
23 1 will not be reflected in the base rates that result
24 from that rate case?

25 A. I don't know. We don't have an outcome

1 yet in this proceeding in terms of timeline and
2 practice with which the benefits will be flowed to
3 customers, and we also don't yet have an outcome of
4 the rate case, so I don't know.

5 Q. Okay. Well, I guess the Smart Grid plan
6 as a -- are customers currently receiving benefits
7 from the Smart Grid plan?

8 A. Not from the Smart Grid plan by itself.

9 Q. Okay.

10 A. But I do believe there are benefits
11 customers are receiving as part of the broader piece
12 of the Stipulation.

13 MS. O'BRIEN: Okay. Your Honor, I would
14 move to strike the last portion of her response as it
15 was nonresponsive to my question which asked only if
16 customers were receiving benefits from the Smart Grid
17 plan.

18 EXAMINER WILLIAMS: I will overrule the
19 motion to strike at this point. She was explaining
20 her answer, and so the testimony can stay in the
21 record.

22 MS. O'BRIEN: Okay.

23 Q. (By Ms. O'Brien) Okay. If you could flip
24 back to page 5 of the settlement.

25 A. Okay.

1 Q. One second here. Okay. And in
2 subparagraph b, paragraph 3b, this discusses
3 operational benefits and it says the settlement -- it
4 says DP&L's recovery of the investment through the
5 IIR will be offset by operational benefits will
6 realize as a result of the DP&L's SGP Phase 1
7 expenditures. Do you see that?

8 A. Yeah, I see that.

9 Q. Would you agree with me that nothing in
10 the settlement requires DP&L to continue the benefit
11 offset beyond year four Smart Grid Plan Phase I?

12 A. I think that nothing in the settlement
13 regarding Smart Grid goes beyond Phase 1 which is
14 four years. That includes the benefits and the costs
15 recovery.

16 Q. So is the answer to my question "yes"?

17 A. Can you repeat it, please?

18 MS. O'BRIEN: Can the court reporter read
19 back, please.

20 (Record read.)

21 EXAMINER WILLIAMS: Can we read the
22 answer back as well, please.

23 (Record read.)

24 EXAMINER WILLIAMS: Thank you, Karen.

25 Ms. O'Brien.

1 MS. O'BRIEN: I think I got my answer, so
2 I am good there.

3 EXAMINER WILLIAMS: Okay.

4 Q. (By Ms. O'Brien) Now, can you turn to
5 page 43 of the settlement and let me know when you
6 are there.

7 A. I'm there.

8 Q. Okay. Now, this paragraph references
9 excused compliance and states that DP&L shall not be
10 in violation of this settlement or any order
11 approving the -- or any order approving the
12 settlement in compliance with certain sections of the
13 settlement is made impracticable or impossible due to
14 events beyond DP&L's reasonable control. What --
15 what does it mean -- what does events beyond DP&L's
16 reasonable control mean?

17 A. I think it is referring to something that
18 could happen that could impair our ability to follow
19 through with our commitments that is somehow out of
20 DP&L's control.

21 Q. Okay. Can you provide an example?

22 A. Sure. For example, this year during the
23 pandemic, there may have been -- if we were trying to
24 complete programs within the Smart Grid, there could
25 have been delivery or supply chain issues that were

1 halted for some reason and in which case DP&L could
2 not access the assets or materials it needed and that
3 would have been beyond DP&L's reasonable control and
4 that could have impacted compliance.

5 Q. Okay. Do you have any other examples?

6 A. Sure. I think in addition to, you know,
7 a supply chain-type issue this year, also during the
8 COVID-19 pandemic there were times where we had field
9 personnel who were not, I use the term loosely, not
10 allowed to be out in the field and interacting with
11 customers to the extent, for example, we were unable
12 to read meters.

13 So I think something like that is beyond
14 our control, beyond DP&L's control. If we can't have
15 field employees working in the field around
16 customers, I think that's another example where there
17 was an order by the Governor that would have -- if we
18 were trying to complete these types of projects would
19 have inhibited our ability if there were strict
20 timelines.

21 Q. Okay. I guess were you finished with
22 your answer?

23 A. Yes. Thank you.

24 Q. Do you have any examples of -- I guess
25 any examples of events beyond DP&L's reasonable

1 control that don't relate to the pandemic?

2 A. Not that I can think of as I sit here
3 today. Obviously it's a legal term, and not being an
4 attorney, I can't expand on all of the possibilities,
5 but I think generally that's the point is that that's
6 probably highlighted this year as a result of the
7 pandemic that we are all aware of things that can
8 occur beyond our control, and so I don't have other
9 examples as I sit here today.

10 Q. So it's your testimony if there was
11 supply chain issues, you could have -- you could have
12 issues with compliance from certain provisions of the
13 settlement?

14 A. No.

15 Q. Okay. And is it your testimony that if
16 you have DP&L workers that are affected by the
17 pandemic or become sick, that would excuse compliance
18 with the settlement?

19 A. No. I don't think that's the
20 interpretation I was trying to explain. I think I
21 was just trying to give broad examples of something
22 beyond our control. And my examples, as you
23 mentioned, have to do with the pandemic, but I don't
24 think the intention or my intention in my explanation
25 was to say it's only the pandemic that could cause

1 something beyond DP&L's control, but it's also not
2 anything because of the pandemic that would cause
3 this.

4 Q. Okay. Let's flip back to page 3 of the
5 settlement. And let me know when you are there.

6 A. Page 3 of the settlement. I'm here.

7 Q. Yep. Okay. And you will see in the
8 second whereas paragraph the statement that AES has
9 provided a statement of intent to contribute an
10 additional 150 million to DP&L or DP&L -- I'm sorry,
11 150 million to DPL or DP&L in 2021 to enable Smart
12 Grid investment. Do you see that?

13 A. I do.

14 Q. Okay. Now, by making this statement of
15 intent, AES is not making a binding commitment to
16 provide this \$150 million contribution in 2021, is
17 it?

18 A. Looking at our response to
19 interrogatories, to OCC Interrogatory 1-4, excuse me,
20 similar question was asked and I quoted what DP&L
21 stated in DP&L's June 26, 2020, rate case filing.
22 And as part of that quote, in addition to saying that
23 AES provided a statement of intent to contribute the
24 additional \$150 million as you mentioned to enable
25 market investment, it goes further to say the payment

1 of contributions to DPL or DP&L are not guaranteed
2 and are dependent on certain conditions including
3 with respect to 2021 contribution recovery of grid
4 modernization investments through the infrastructure
5 investment rider.

6 Q. Okay. Thank you. Okay. Now switching
7 back, and this is about the 2018 SEET case, your
8 testimony, yours, not other DP&L testimony, is not
9 recommending a specific SEET threshold for the
10 retrospective SEET test for 2018, is it?

11 A. The Stipulation doesn't contain any
12 threshold, just contains the agreement that DP&L
13 passes the test.

14 Q. Okay. And but also your testimony does
15 not recommend a specific SEET threshold, does it?

16 A. It does not.

17 Q. Okay. And for the 2019 SEET case, your
18 testimony also doesn't recommend a specific
19 threshold, right?

20 A. I don't.

21 Q. Okay. Now, I would like to see if you
22 can get available to you, I think you should already
23 have it is OCC 37A which is DP&L's responses to OCC's
24 first set of consolidated discovery -- discovery in
25 the consolidated cases. Do you have that available?

1 A. Yes. I believe I have a hard copy of the
2 whole set, and I've just opened up OCC 37.

3 Q. Okay. And can you turn to -- let me just
4 get to the page here. Okay. It's page 26.

5 EXAMINER WILLIAMS: Ms. O'Brien, 37A is
6 technically just 1 through 5 and 76.

7 MS. O'BRIEN: Okay. Exactly. And my --
8 I'm sorry, your Honor. My intent is to request to
9 mark as OCC I think it would be 37C now, right, would
10 be the specific interrogatory and response INT-1-19.

11 EXAMINER WILLIAMS: Okay. So you only
12 want what would be PDF page 26 to be Exhibit 37B?

13 MS. O'BRIEN: Well, I thought -- I
14 thought we marked before -- well, I mean, I guess
15 what's -- what do you prefer us to do? I mean, we
16 can just mark this. Well, let's go ahead and just do
17 like we did with 37A.

18 EXAMINER WILLIAMS: I guess are you going
19 to ask multiple questions within this document?

20 MS. O'BRIEN: Within -- I am going to ask
21 questions about 1-19 and 1-20, so if we could do
22 this, if we could mark as 37B the first four pages of
23 the document. And then also page 26, page 27, and
24 also page -- page 76.

25 EXAMINER WILLIAMS: So marked.

1 MS. O'BRIEN: Can we mark all of that --
2 okay.

3 COURT REPORTER: I'm sorry. Before we go
4 any further, we already had a 37B. It was page 6.

5 MS. O'BRIEN: Okay. That's what I
6 thought. I thought -- so can we mark this as 37C?

7 EXAMINER WILLIAMS: Thank you, Karen.
8 Good catch. That will be 37C.

9 MS. O'BRIEN: I thought -- I thought we
10 had a B but, okay, so 37C.

11 (EXHIBIT MARKED FOR IDENTIFICATION.)

12 Q. (By Ms. O'Brien) So if you could take a
13 look at this interrogatory here. Okay. Now, you are
14 the person responsible for the response in this
15 interrogatory, correct?

16 A. I want to make sure I am looking at the
17 right one. Are we looking at 1-19?

18 Q. Yes, page 26.

19 A. Yes, I am the witness responsible for
20 this response.

21 Q. Okay. Okay. So according to this
22 discovery response, the reason the settlement does
23 not contain the SEET threshold is because the parties
24 agreed that there were no significantly excessive
25 earnings; is that correct?

1 A. I'm not sure if I could say that that's
2 why it's not in the settlement. That may have been
3 part of the settlement discussions but I do agree
4 that it says there are no -- there is no threshold
5 because we agree that there were no significantly
6 excessive earnings.

7 Q. Okay. Now if you can flip to
8 Interrogatory No. 20.

9 A. Yes.

10 Q. Okay. Now, according to this
11 discovery -- and you are -- again I see your name
12 here. Are you the person responsible for the
13 response to this discovery request?

14 A. Yes.

15 Q. Okay. So in this response same thing,
16 the settlement likewise does not contain a SEET
17 threshold for 2019 for the same reason; is that
18 right?

19 A. Yes, because the parties agreed there
20 were no significantly excessive earnings.

21 Q. Okay. Okay. Now, if you can grab your
22 testimony and go to page 28. Let me know when you
23 are there.

24 A. Okay.

25 Q. Okay. And starting at line 17, okay, you

1 state here that "The Stipulation further benefits
2 customers by providing that DP&L will file an
3 application for approval of ESP IV," and then a
4 couple lines down you cite "DP&L's rate plans and
5 associated rates have been subject to significant
6 changes in recent years; DP&L implemented ESP II in
7 2013; reverted to ESP I in 2016;" and then going onto
8 the next page "implemented ESP III in 2017; and again
9 reverted to ESP I in 2019."

10 The question I want to ask is DP&L made
11 the decision to file those applications to revert
12 back to ESP I, correct?

13 A. I guess I am not sure exactly the process
14 that occurred, if that was an application or not.

15 Q. Okay. But it was -- DP&L made the
16 decision to do that, am I right, whether through an
17 application or some other mechanism?

18 A. To do which thing?

19 Q. To revert back to ESP I.

20 A. Yes, as a result of changes in ESP III.

21 Q. Okay.

22 A. Or the first changes in the ESP II.

23 Q. Okay. Okay. Now, going back to page 4
24 of --

25 A. Of the Stipulation?

1 Q. Of the testimony, of your testimony.

2 A. Okay.

3 Q. Okay. If you refer to line 19 here, this
4 testimony is that the Smart Grid plan shall be
5 divided into phases. Now, as I understand it under
6 the settlement, DP&L can begin its Smart Phase 2
7 before Smart Phase 1 is fully implemented and
8 operational; is that correct?

9 A. No, not the way I interpret the word
10 begin. We can file an application as agreed to in
11 the Stipulation and that would be during Phase 1. So
12 there is a commitment within the settlement that DP&L
13 plans to pursue subsequent phases of comprehensive
14 grid modernization and may file an application for a
15 second phase on or before three years from the date
16 of the Commission's order approving the Stipulation.
17 I just disagree. I don't think that again Phase 2 is
18 the same as filing the application for Phase 2.

19 EXAMINER WILLIAMS: Ms. O'Brien, we're at
20 a little bit of a break here. I just need to know
21 whether or not we are going to try to press on and
22 conclude this evening or whether we should be
23 contemplating resuming this testimony tomorrow
24 morning. So if you have more than 10 or 15 minutes
25 or so, we should probably contemplate trying to wrap

1 up for the evening. If you think you can do it
2 within that time frame, then let's proceed.

3 MS. O'BRIEN: Well, I apologize. I'm
4 plagued by technological problems. Can you hear me?

5 EXAMINER WILLIAMS: I can hear you, yes.
6 I don't know if you heard any of my soliloquy on time
7 management. Where are we in terms of your
8 cross-examination? Another 10 or 15 minutes or 30?

9 MS. O'BRIEN: Yeah. I just need another
10 10 or 15 minutes.

11 EXAMINER WILLIAMS: Okay. Let's go ahead
12 and stay on task then.

13 MS. O'BRIEN: Okay. So I guess I --
14 before my -- before my phone dropped, I didn't -- can
15 you reread the last question, the court reporter
16 reread the last question?

17 EXAMINER WILLIAMS: Karen, can you read
18 the last question and answer. Apparently Ms. O'Brien
19 lost connection there for a minute.

20 (Record read.)

21 Q. (By Ms. O'Brien) Okay. So I guess my
22 next question was going to be if you -- if you can
23 get the Stipulation, turn to page 20. Let me know
24 when you are there.

25 A. Can you hear me? Maybe I hit myself on

1 mute. I apologize.

2 Q. Yeah.

3 A. I am on page 20 of the Stip.

4 Q. Okay. And if you look at the paragraph
5 before paragraph 10, it talks about thermostats.
6 Now, isn't it true under the Stipulation DP&L is
7 required to provide the smart thermostat rebate
8 program that will be collected from residential
9 customers through the IIR Rider in subsequent Smart
10 Grid phases?

11 A. Can you repeat that?

12 MS. O'BRIEN: Can the court reporter
13 reread it back, please.

14 (Record read.)

15 A. No. I don't think it's required to
16 recover this in Phase 2. I think the requirement for
17 the commitment here is that DP&L will propose
18 recovery of costs for smart thermostat rebate through
19 either base rate and/or the IIR or through any rider
20 authorized for recovery of costs in Phase 2.

21 Q. So is it -- does DP&L -- does DP&L
22 have -- what types of programs does DP&L plan to have
23 for SGP Phase 2?

24 A. I don't know. We haven't developed Phase
25 2.

1 Q. And just so my understanding is clear,
2 Smart Grid Plan Phase 2 would involve costs in
3 addition to the 20 -- or the 267 million -- or
4 267.6 million in settlement that the settlement
5 authorizes for SGP Phase 1?

6 A. I don't know. As mentioned, we haven't
7 developed any Phase 2 yet.

8 Q. Okay. Okay. I just have a couple more
9 questions. Okay. Could you turn to page 5 of your
10 testimony. Let me know when you are there.

11 A. Okay. I'm there.

12 Q. Now, if you -- look at line 12 and 13.
13 It says here "DP&L's investments and expenses will be
14 subject to an annual audit, which will review DP&L's
15 expenditures." Can you explain what type of audit is
16 meant by this provision?

17 A. Sure. I think looking back at the
18 settlement in Section 5, there's quite a bit of
19 detail there regarding the audit. It will be annual
20 and conducted by Staff or a third party under the
21 direction of Staff. And it has a number of
22 requirements there, for example, on-site inspection
23 of the new capital assets, tracking capital
24 expenditures or expenses through property records all
25 the way through until they are used and useful

1 assets, tracking through other supporting
2 documentation, verification of proper accounting, tax
3 expense, depreciation expense, verification of that
4 labor is incremental, review of any applicable
5 allocations, justifications for percentages,
6 invoices, contracts, requests for proposals, journal
7 entry reports, verification of revenues.

8 The audit will also review nonfinancial
9 metrics. Those are contained in the Exhibit 3 and
10 there are three pages' worth of detailed metrics
11 agreed to by all the parties that will be measured
12 and reviewed during those annual audits.

13 Q. Okay. Were you finished?

14 A. I was. Thank you.

15 Q. Okay. Would you consider any of those --
16 would you consider those audits to be managerial
17 audits or financial audits?

18 A. I don't know. I don't know that
19 distinction.

20 MS. O'BRIEN: Okay. Your Honor, I would
21 like to mark -- and I don't actually believe it's on
22 our exhibit list that we had, but I know that a
23 number of parties had indicated that they were going
24 to use the document, and it's the PowerForward
25 Roadmap. Would I able to mark that as an OCC

1 exhibit?

2 MR. HEALEY: That is OCC 66.

3 MS. O'BRIEN: Okay. Thank you. I didn't
4 have my thing handy, so OCC 66.

5 EXAMINER WILLIAMS: So marked.

6 (EXHIBIT MARKED FOR IDENTIFICATION.)

7 Q. (By Ms. O'Brien) Okay. Do you have that
8 available, Ms. Schroder?

9 A. Not yet.

10 EXAMINER WILLIAMS: Mr. Ireland, are you
11 anticipating some redirect?

12 MR. IRELAND: Sorry, your Honor. I lost
13 my cursor. I believe -- I think we may have a modest
14 amount of redirect, but I really need to talk to the
15 witness first to make sure she has an understanding
16 of what I am going to be asking her.

17 EXAMINER WILLIAMS: Candidly I was going
18 to allow Ms. O'Brien time to confirm and review her
19 notes and to confirm that she was satisfied with
20 where she was in her cross, give you time to prepare,
21 and then obviously we might entertain even some
22 further recross. We'll see where we end up.

23 But with that I think this probably is a
24 logical stopping point tonight. Ms. Schroder, I was
25 hoping we would be able to press on and finish your

1 testimony, but I think we probably better pick you
2 back up tomorrow morning at 9:00.

3 Ms. O'Brien, are you okay with that
4 determination?

5 MS. O'BRIEN: Yes, I'm fine.

6 EXAMINER WILLIAMS: Okay. Anybody else
7 have anything they want to say in objection?

8 Wisely, I see none. So with that it is
9 5:06. We will conclude for the night, and we will be
10 back on the record tomorrow at 9:00. So any
11 technology test session or anything else, I would
12 certainly encourage everyone to be logged on, make
13 sure your technology didn't disappear by 8:45
14 tomorrow.

15 Okay. We are off the record.

16 (Thereupon, at 5:06 p.m., the hearing was
17 adjourned.)

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CERTIFICATE

I do hereby certify that the foregoing is a true and correct transcript of the proceedings taken by me in this matter on Monday, January 11, 2021, and carefully compared with my original stenographic notes.

Karen Sue Gibson, Registered
Merit Reporter.

(KSG-7022)

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