

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

- - -  
 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). :

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

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7 PROCEEDINGS

8 before Ms. Patricia Schabo and Mr. Michael Williams,  
 9 Attorney Examiners, at the Public Utilities  
 10 Commission of Ohio, via Webex, called at 9:03 a.m. on  
 11 Tuesday, January 12, 2021.

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13 VOLUME II

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1                   Tuesday Morning Session,  
2                   January 12, 2021.

3                   - - -

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

6                   Good morning, everyone. We are back on  
7 the record in the DP&L multi -- multi-litigation  
8 matter, 18-1875, et al., considers DP&L's issues of  
9 Smart Grid retrospective SEET review from 2018 and  
10 2019, as well as the quadriennial review case.

11                   When we broke yesterday afternoon,  
12 Witness Schroder was on the stand and was being  
13 cross-examined by Attorney O'Brien. And,  
14 Ms. Schroder, I will remind you you remain under oath  
15 from yesterday.

16                   Ms. O'Brien, I will return to you for  
17 cross-examination.

18                   MS. O'BRIEN: Okay. Thank you.

19                   - - -

20                   SHARON SCHRODER  
21 being previously duly sworn, as prescribed by law,  
22 was examined and testified further as follows:

23                   CROSS-EXAMINATION (Continued)

24 By Ms. O'Brien:

25                   Q. Good morning, Ms. Schroder.

1           A.    Good morning.

2           Q.    Now, do you recall our discussion  
3 yesterday? I think when we left off, we were  
4 discussing the audit provisions of the settlement.  
5 Do you remember that conversation?

6           A.    Not the details of it, no.

7           Q.    Okay. Well, do you remember me asking  
8 you a question with respect to financial audits  
9 versus managerial audits?

10          A.    Yes.

11          Q.    Okay. And do you understand the  
12 distinction between the two?

13          A.    Not exactly. I know when the Commission  
14 or its auditors perform audits, there's -- there  
15 sometimes can be a blurred line between the types of  
16 questions they ask. And I know in the settlement  
17 there are some very specific items that will be  
18 reviewed in the audit.

19          Q.    Okay. And I think yesterday before we --  
20 before we broke, I had marked OCC Exhibit 66 which is  
21 the PowerForward Roadmap. Do you have that  
22 available?

23          A.    Yes, I do.

24          Q.    Okay. And could you please turn to page  
25 27 and let me know when you are there.

1           A.    Okay.  I'm there.

2           Q.    Okay.  And do you see a discussion --  
3    about halfway down in the second column of the page  
4    you'll see in bold "Financial Audit and Managerial  
5    Audit."  Do you see that?

6           A.    Yes, I see it.

7           Q.    Okay.  And then do you see text that says  
8    "The managerial audit would" and then the first  
9    bullet point says "evaluate whether the capital  
10   deployed resulted in grid functionality that is in  
11   accordance with the company's Grid Modernization Plan  
12   and PowerForward principles/objectives."  Do you see  
13   that?

14          A.    Yes.

15          Q.    Okay.  Does that help your understanding  
16   of the distinction between financial and managerial  
17   audit?

18          A.    Yes, as is described here.

19          Q.    Okay.  Now, can you tell me what  
20   specifically in the settlement there is that required  
21   DP&L to demonstrate functionality of the Smart Grid  
22   Plan Phase 1 before it filed an application for Smart  
23   Grid Plan Phase 2?

24          A.    As I discussed yesterday, there is  
25   nothing that restricts in terms of an audit or

1 outcome of an audit before DP&L can file for Phase 2  
2 but as I mentioned yesterday, filing for Phase 2, an  
3 application for Phase 2, which in the Stipulation we  
4 agreed with the parties that we may file an  
5 application for a second phase on or about three  
6 years from the date of the Commission's order  
7 approving the Stipulation, certainly there will be  
8 audits before then because they are to occur  
9 annually. So whatever occurs in those audits will  
10 occur before the application is filed.

11 But I do want to reiterate that the  
12 application for a Phase 2 and implementing Phase 2  
13 are two distinct things.

14 Q. Okay. So does DP&L have to demonstrate  
15 functionality of Smart Grid Plan Phase 1 before it  
16 files an application for Smart Grid Plan Phase 2?

17 A. I don't know. So, for example, there are  
18 some particulars that talk about the functionality  
19 that has to be demonstrated before we can recover the  
20 prudently-incurred cost, so I know that exists. For  
21 example, with the CIS system, on page 20 of the  
22 Stipulation, there are some requirements here that  
23 indicate that DP&L will invest no later than six  
24 months after the Commission order approving the  
25 Stipulation in this case, and it goes on to say "that

1 will perform core functionality including at least  
2 the following," and it goes on for about a page and a  
3 half about that core functionality that it will  
4 perform.

5 And on the bottom of page 21, there is an  
6 indication that to recover those CIS investments and  
7 costs there's language that says "subject to  
8 demonstration that the functionality detailed above  
9 is available." So I think there are examples where  
10 the functionality will be demonstrated. The timing  
11 of that compared to the timing of an application I  
12 don't know.

13 Q. Okay. But you would agree with me that  
14 nothing in the settlement required that demonstration  
15 to be made before DP&L can file its application for a  
16 Smart Grid Plan Phase 2.

17 A. As I said, I don't know because the  
18 audits will be performed annually, and I don't know  
19 yet the extent of the audits that the Commission or  
20 its auditor will perform. All I know is that it will  
21 at least perform the audits and the specifics that  
22 are outlined in the Stipulation including Exhibit 3  
23 and the several pages of metrics that are there.

24 Q. Okay. Now I am going to move on to a  
25 different topic. Yesterday we discussed the exhibits

1 to the settlement and the cost/benefit summary. So I  
2 just have a couple follow-up questions with respect  
3 to those exhibits.

4           You know, you would agree with me that  
5 DP&L will recover carrying charges related to the  
6 Smart Grid Plan Phase 1 investment from customers,  
7 wouldn't you?

8           A.    I don't -- I don't know.

9           Q.    You don't know whether -- you don't know  
10 whether DP&L's planning to recover its carrying  
11 charges as a part of Smart Grid Phase 1?

12           A.    Depending on the definition of carrying  
13 charges, I recall seeing an OCC witness define those  
14 different than I have seen those in the past.  
15 Secondly, that we have a cap and so there may be  
16 costs that DP&L incurs that are not recovered through  
17 the Smart Grid plan in the IIR due to the cap.

18           Q.    Okay. What's your definition of carrying  
19 charges?

20           A.    In that case I would defer to a  
21 traditional accounting definition of carrying  
22 charges. I am not an accounting expert but that's  
23 how I've heard it traditionally treated.

24           Q.    Okay. But you're testifying as a  
25 regulatory expert with respect to the settlement and



1 with respect to DP&L's Smart Grid plan, right?

2 A. I am.

3 Q. Okay. So does DP&L plan to recover its  
4 carrying charges according to your definition?

5 A. As I said, I don't know -- given the caps  
6 I don't know should that occur or not.

7 Q. Okay. So your testimony is you don't  
8 know whether or not DP&L plans to recover its  
9 carrying charges from customers. I just want to make  
10 that clear.

11 A. Correct.

12 MR. IRELAND: I'll object. It's the  
13 third time we have asked the same question.

14 EXAMINER WILLIAMS: You know, she is  
15 still making progress in getting an understanding  
16 what the carrying charge expectations are, so I will  
17 allow her to continue to ask questions until she gets  
18 I think to -- to the end of the line.

19 Ms. O'Brien, do you want to restate it?

20 MS. O'BRIEN: Actually can the court  
21 reporter read that back, please.

22 (Record read.)

23 EXAMINER WILLIAMS: Ms. Bryan, are you  
24 satisfied with that answer?

25 MS. O'BRIEN: So I'm clear,

1 Ms. Schroder's answer was "correct" to my question?

2 EXAMINER WILLIAMS: That is correct.

3 MS. O'BRIEN: Okay. Yes.

4 Q. (By Ms. O'Brien) Okay. So now,  
5 Ms. Schroder, can you tell me, has DP&L estimated the  
6 costs of carrying charges over a 20-year period?

7 A. Not that I'm aware of.

8 Q. Okay. Now, has DP&L estimated the total  
9 costs of SPG1 to customers over 20 years?

10 A. As part -- yes, as part of the  
11 cost/benefit analysis, DP&L did estimate the costs  
12 across the 20 years as well as the benefits, and the  
13 benefits exceed those costs.

14 Q. And those -- that information is not  
15 included in the attachments to the Stipulation, is  
16 it?

17 A. It is. As I mentioned yesterday, there  
18 is a summary in Exhibit 4 and there are various  
19 references within the Stipulation regarding that  
20 cost/benefit analysis, and extensive detailed  
21 schedules and workpapers were provided in discovery  
22 that supports those summaries.

23 Q. So you -- I'm sorry. I didn't mean to  
24 cut you off. Were you finished? Okay. We  
25 established yesterday, and obviously as the

1 Stipulation reflects, those workpapers and schedules  
2 are not attached to the Stipulation, correct?

3 A. Correct. They are not attachments.

4 Q. Okay.

5 MS. O'BRIEN: At this time that's -- I  
6 don't have any further questions.

7 EXAMINER WILLIAMS: Thank you,  
8 Ms. O'Brien.

9 Mr. Ireland, are you ready for some  
10 redirect?

11 MR. IRELAND: Yes, I am, your Honor. I  
12 assume no one else has any questions for  
13 Ms. Schroder?

14 EXAMINER WILLIAMS: I'm not seeing anyone  
15 reach for their unmute button. I think it's all you,  
16 sir.

17 MR. IRELAND: Okay. As a prelude, your  
18 Honor, I will tell you I have just a few questions,  
19 but I am going to introduce an exhibit which is a --  
20 contains confidential information. I am not going to  
21 ask Ms. Schroder to describe any of that confidential  
22 information, but I am going to need Chris Hollon to  
23 distribute that to the witness and to your Honors and  
24 also to those folks who have signed the  
25 Stipulation -- or the protective order so they can

1 see confidential information.

2 EXAMINER WILLIAMS: I'm comfortable with  
3 that. Is that something you can do in the course of  
4 your redirect, or do you want to take a minute to get  
5 everything set and then come back after a break?

6 MR. IRELAND: No, no, we don't need a  
7 break. I just wanted to alert that to you so you are  
8 not surprised.

9 EXAMINER WILLIAMS: Okay.

10 - - -

11 REDIRECT EXAMINATION

12 By Mr. Ireland:

13 Q. Ms. Schroder, are you there?

14 A. I am.

15 Q. Do you recall questions yesterday  
16 afternoon and again this morning from counsel for OCC  
17 concerning the workpapers in support of the  
18 Stipulation that were provided in discovery?

19 A. Yes, I do.

20 Q. And those workpapers support the  
21 Stipulation; is that right?

22 A. That's right. The workpapers, the  
23 schedules are the detailed support that roll up to  
24 the summary that's contained in Exhibit 4.

25 MR. IRELAND: Okay. So I am now --

1 Mr. Hollon, I believe, your Honor, is going to be  
2 distributing what we will call DP&L Exhibit 5 which  
3 should be coming to the Bench as well as to those  
4 parties who have signed the protective order and the  
5 witness.

6 Ms. Schroder, when you have that, could  
7 you let me know.

8 EXAMINER WILLIAMS: Mine just came  
9 through.

10 MR. IRELAND: Okay.

11 A. I have that.

12 Q. All right.

13 EXAMINER WILLIAMS: I am waiting. Give  
14 me a second, please. Okay.

15 Q. (By Mr. Ireland) So taking a look at  
16 what's been marked --

17 MS. O'BRIEN: I'm sorry. Could I just  
18 pull it up so I can look at it.

19 MR. IRELAND: Absolutely. Absolutely.

20 MS. O'BRIEN: Okay. Just give me a  
21 second here. I'll let you know.

22 EXAMINER WILLIAMS: Thank you,  
23 Ms. O'Brien.

24 MS. O'BRIEN: I have it pulled up.  
25

1 EXAMINER WILLIAMS: Go ahead and take a  
2 look at it and let me know when you are ready for him  
3 to proceed.

4 EXAMINER SCHABO: Can you remind me --

5 EXAMINER WILLIAMS: DP&L Exhibit 5 is  
6 what Mr. Ireland referenced.

7 MR. IRELAND: I believe Ms. Schroder's  
8 testimony is 4 and this will be 5 but it should --  
9 but for purposes of the record it should be marked  
10 confidential.

11 EXAMINER SCHABO: Because I am a record  
12 geek, can we actually label it other than DP&L 5  
13 confidential? Are you calling it a spreadsheet? Are  
14 you calling it --

15 MR. IRELAND: Okay. Well, it's a  
16 series --

17 EXAMINER WILLIAMS: Confidential  
18 workpapers.

19 THE WITNESS: Cost/benefit analysis.

20 MR. IRELAND: Yeah, cost/benefit  
21 analysis.

22 EXAMINER SCHABO: Okay. Thank you.

23 (EXHIBIT MARKED FOR IDENTIFICATION.)

24 MS. O'BRIEN: I think I'm ready.

25 MR. IRELAND: Okay. Thank you.

1           Q.     (By Mr. Ireland) So, Ms. Schroder, with  
2 Exhibit 5 in front of you, can you identify this  
3 exhibit, what it is without revealing any  
4 confidential information?

5           A.     Yes. This is the details that support  
6 the cost/benefit analysis that was done consistent  
7 with the modifications in the application that align  
8 with the Stipulation that the parties agreed to.  
9 This contains DP&L's business case in significant  
10 detail. It provides a holistic cost/benefit analysis  
11 with supporting schedules, workpapers, and a variety  
12 of confidential assumptions behind those.

13           MR. IRELAND: I think that answer, your  
14 Honor, that would complete her redirect and move the  
15 admission of Exhibits 4 and 5.

16           EXAMINER WILLIAMS: Okay. Ms. O'Brien?

17           MS. O'BRIEN: Your Honor --

18           MS. BOJKO: Your Honor, I'm sorry to  
19 interrupt, but we just got the e-mail. Could you  
20 please give us a moment to take a look at it.

21           EXAMINER WILLIAMS: That seems more than  
22 appropriate. Gives Ms. O'Brien a chance to stage  
23 before she would ask any of her recross anyway. So  
24 why don't we take 5. We will come back. We will  
25 take -- we will come back at 9:25. We are off the

1 record.

2 (Recess taken.)

3 EXAMINER WILLIAMS: Back on the record.  
 4 We just took a short break in response to the e-mail  
 5 distribution of DP&L Exhibit 5. And I want to make  
 6 sure that everyone has had a chance to review it, and  
 7 I think a logical place to ensure that would be to  
 8 have the last question and answer before the break  
 9 reread for all the -- all the litigants.

10 Karen, could you do that for us.

11 (Record read.)

12 EXAMINER WILLIAMS: Thank you, Karen.

13 Mr. Ireland, with that I believe you were  
 14 concluded with your redirect?

15 MR. IRELAND: Yes, your Honor.

16 EXAMINER WILLIAMS: Thank you.

17 Ms. O'Brien, recross?

18 - - -

19 RECROSS-EXAMINATION

20 By Ms. O'Brien:

21 Q. Ms. Schroder, do you recall my previous  
 22 questions earlier this morning about the carrying  
 23 charges?

24 A. Yes, I do.

25 Q. And I believe your testimony was that you



1 were not a cost expert; is that right?

2 A. No. I think I said that I wasn't an  
3 accounting expert.

4 Q. Okay. So are you a cost expert?

5 A. I'm not sure how to define that, so I  
6 would say no.

7 Q. Okay. Did you create these documents?

8 A. I did not create the spreadsheets, but I  
9 worked very closely with the teams that did. I think  
10 I mentioned yesterday in some of the responses when  
11 you were asking about the details that support the  
12 business case and the cost/benefit analysis, if I was  
13 involved in and I was in -- we have a number of  
14 experts within the company, planners, engineers,  
15 program management managers, as well as the  
16 consultants that we use from West Monroe Partners,  
17 and in conjunction with that team, we developed these  
18 schedules. I personally did not create the  
19 spreadsheet.

20 Q. Okay. And you are not -- and your  
21 testimony that you filed with respect to the  
22 settlement does not sponsor these schedules and  
23 workpapers, do they?

24 A. That's incorrect. It does. I do sponsor  
25 these, the cost/benefit analysis, and these are the

1 details that support that cost/benefit analysis.

2 Q. Okay. But you didn't file the workpapers  
3 and schedules with your testimony, correct?

4 A. I don't know the legal definition of  
5 file, but I know that these confidential schedules  
6 and workpapers were provided to the parties that had  
7 signed the confidentiality agreement in the context  
8 of discovery. And these are the ones I was referring  
9 to yesterday regarding a number of your questions.

10 So as I mentioned, the summary of all of  
11 these is incorporated in Exhibit 4 to my testimony  
12 and now these are Exhibit 5 to my testimony and I do  
13 support the cost/benefit analysis and the Stipulation  
14 and these are part of that.

15 Q. Were these schedules and workpapers  
16 attached to the testimony that you filed in support  
17 of the settlement?

18 A. As an attachment?

19 Q. Yes.

20 A. They were not. As you can see here,  
21 there are a number of tabs. I believe for efficiency  
22 there are not a number of attachments. Instead they  
23 are the summaries of this information instead of  
24 hundreds of pages of the spreadsheet and those were  
25 instead provided in discovery as support.

1 MS. O'BRIEN: Okay. Your Honor, I am  
2 going to move to strike the remainder of her answer.  
3 It was a simple yes or no question, and I believe she  
4 answered it, so I am going to move to strike the  
5 remainder of that.

6 EXAMINER WILLIAMS: I am going to  
7 overrule that motion. I am going to overrule that  
8 motion. She is certainly entitled to explain her  
9 response, and she did.

10 Q. (By Ms. O'Brien) So you would agree with  
11 me though workpapers are not attached to the  
12 settlement, right?

13 A. I understand now that they are now that  
14 they have been entered in as Exhibit 5.

15 Q. They were not filed with the settlement,  
16 when DP&L filed the settlement on October 23, were  
17 they?

18 A. As I mentioned before, I believe that  
19 they were incorporated in the settlement before the  
20 hard copy, if you will, the hard copy papers were not  
21 an attachment.

22 EXAMINER WILLIAMS: Ms. Schroder, I am  
23 going to let Ms. O'Brien get her yes or no answer.

24 Ms. O'Brien, ask it one more time,  
25 please.

1 Q. (By Ms. O'Brien) Okay. These schedules  
2 and workpapers were not filed with the settlement  
3 that was filed on October 23, correct?

4 MS. BOJKO: Objection, your Honor.

5 A. Not as attachments.

6 EXAMINER WILLIAMS: Ms. Bojko, what is  
7 your objection?

8 MS. BOJKO: I was going to ask for  
9 clarification of which schedules she was talking  
10 about since there are some attached to the Stip.

11 EXAMINER WILLIAMS: Okay. Ms. O'Brien, I  
12 will let you fine-tune your question then to  
13 specifically which papers you are -- you were  
14 referencing.

15 Q. (By Ms. O'Brien) Okay. I can't see -- I  
16 mean, honestly we just had the opportunity to look  
17 through all these workpapers. I haven't had the  
18 opportunity to go through each one of them to see  
19 which ones, but I am quite confident that this whole  
20 set of tabs and workpapers was not filed with the  
21 settlement.

22 EXAMINER WILLIAMS: I guess just in  
23 trying to move this along, the settlement is part of  
24 the record. You know, it speaks for itself, so I  
25 will let you have a little bit more liberty if you

1 think you need it. The settlement is filed, and we  
2 can all look and see what was attached and what was  
3 not attached.

4 MS. O'BRIEN: Okay. That's fair enough.  
5 I will move on.

6 Q. (By Ms. O'Brien) So, Ms. Schroder, DP&L  
7 is not sponsoring testimony -- any expert testimony  
8 besides your own with respect to these workpapers and  
9 schedules; is that correct?

10 A. That's correct. I am the one that's  
11 sponsoring the cost/benefit analysis that's contained  
12 in these schedules and workpapers.

13 Q. Okay.

14 A. And I will clarify the very first tab is  
15 attached as Exhibit 4 to the Stipulation.

16 Q. Okay. And the work -- the other tabs to  
17 the workpapers and schedules are not, right?

18 A. As I've answered before, I don't think  
19 it's a simple yes or no question. We've had a number  
20 of discussions about this. My interpretation is that  
21 they are included as part of the Stipulation and  
22 supported by my testimony.

23 Q. Okay. And again, your testimony is that  
24 you personally did not create these documents,  
25 correct?

1           A.    My testimony was that I was part of the  
2 team that developed these schedules, these  
3 workpapers, the support for the cost/benefit  
4 analysis. I didn't type in, for example, the numbers  
5 into each tab of the spreadsheet.

6           Q.    All right. And I think your testimony  
7 was too that the information in these workpapers and  
8 schedules was also created by experts, and I believe  
9 you said consultants from DP&L?

10          A.    Yes, as a team and I was part of that  
11 team, that's correct.

12          Q.    Okay. And DP&L is not sponsoring  
13 testimony of those experts and consultants, are they?

14          A.    Yes. I'm sponsoring them.

15          Q.    Besides you they are not filing testimony  
16 of experts or consultants to explain these workpapers  
17 and schedules; is that correct?

18          A.    No. I would say that I am providing the  
19 expert testimony that's supporting the cost/benefit  
20 analysis that contains these schedules and  
21 workpapers.

22          Q.    Ms. Schroder, I said besides you DP&L has  
23 not filed any testimony of experts or consultants to  
24 sponsor these exhibits, have they?

25          A.    I apologize if you said "besides you."

1 What I heard was that we didn't file any expert  
2 support and so I would agree that besides me, we have  
3 no other supporting testimony regarding the  
4 cost/benefit analysis. I sponsor that alone.

5 MS. O'BRIEN: Okay. Thank you. I think  
6 I'm done with my recross. I think based on that, OCC  
7 would move to -- or, I'm sorry, we would object to  
8 admission of these documents.

9 EXAMINER WILLIAMS: All right. Before we  
10 take up the exhibits, I want to make sure Mr. Ireland  
11 is satisfied. Obviously we are tapering this solely  
12 in regard to the redirect and recross.

13 Mr. Ireland, anything else you need to  
14 ask?

15 MR. IRELAND: No, your Honor. Thank you.

16 EXAMINER WILLIAMS: All right. Thank  
17 you.

18 We'll deal with the sponsoring party's  
19 exhibits first, and then we will deal with OCC's  
20 exhibits. So, Mr. Ireland, do you want to move to  
21 admit any of your exhibits?

22 MR. IRELAND: Yes, your Honor. I would  
23 renew the motion to admit Exhibit 4, which is the  
24 supple -- or the testimony of Ms. Schroder, and  
25 Exhibit 5, which is the cost/benefit analysis

1 confidential workpapers that were provided this  
2 morning.

3 EXAMINER WILLIAMS: Thank you.

4 Ms. O'Brien, do you have a response to  
5 one or both of those documents?

6 MS. O'BRIEN: No objection as to DP&L's  
7 Exhibit 4. OCC objects to DP&L Exhibit 5.

8 Ms. Schroder has no personal knowledge with respect  
9 to these -- the creation of these schedules and  
10 workpapers. She testified that they are the product  
11 of expert witnesses and consultants. DP&L is not  
12 presenting testimony of those experts and consultants  
13 to support these schedules and workpapers.

14 And, furthermore, they could have been  
15 filed with the settlement that was filed on  
16 October 23 or as an attachment to Ms. Schroder's  
17 testimony, and they were not. So on that basis OCC  
18 objects to the admission of DP&L Exhibit 5.

19 EXAMINER WILLIAMS: Mr. Ireland, I will  
20 let you respond.

21 MR. IRELAND: Thank you, your Honor. The  
22 testimony of Ms. Schroder is that she is the sponsor  
23 of the cost/benefit analysis. The suggestion that  
24 was made during her examination yesterday and today  
25 was that there was no support for the cost/benefit



1 analysis.

2           Obviously there is support. The  
3 information has been shared with all of the parties  
4 to this proceeding, and it certainly is not unusual  
5 to have a witness who is sponsoring work, especially  
6 since she is the Manager of Regulatory Affairs and an  
7 expert, that's performed by others that she's  
8 familiar with the preparation of the materials.

9           And again, this -- this information has  
10 been shared with everyone so if there was a concern  
11 about any of the information that was contained in  
12 there, everyone had an opportunity to raise an  
13 objection.

14           EXAMINER WILLIAMS: Okay. I have what I  
15 need. Thank you. The exhibit will be admitted over  
16 the objection. Ms. Schroder is a regulatory affairs  
17 expert. She testified she is part of the team that  
18 created this document, and she is able to sponsor and  
19 has sponsored testimony in support of the  
20 cost/benefit analysis at issue in this case.

21           So with that finding, the exhibit is  
22 deemed admitted over the objection of OCC.

23           (EXHIBITS ADMITTED INTO EVIDENCE.)

24           EXAMINER WILLIAMS: I believe those are  
25 the only two exhibits on behalf of the proffering

1 party.

2 We will take up your exhibits, Ms.

3 O'Brien. Would you like to?

4 MS. O'BRIEN: Yes. At this time OCC  
5 would like to move for admission of OCC Exhibit 8  
6 which is the ESP I Stipulation.

7 EXAMINER WILLIAMS: I guess we will do  
8 these individually, if that's okay.

9 Mr. Ireland, any objection?

10 MR. IRELAND: No, your Honor.

11 EXAMINER WILLIAMS: Okay.

12 (EXHIBIT ADMITTED INTO EVIDENCE.)

13 MS. O'BRIEN: We would move for admission  
14 of OCC Exhibit 10 which is the ESP III Amended  
15 Stipulation.

16 EXAMINER WILLIAMS: Mr. Ireland?

17 MR. IRELAND: No objection.

18 EXAMINER WILLIAMS: It's in.

19 MS. BOJKO: Your Honor, OMAEG does have  
20 an objection to OCC Exhibit 10. The ESP III  
21 Stipulation is irrelevant to the case here. It was  
22 established in cross-examination that that  
23 Stipulation was withdrawn and no longer effective and  
24 no longer in place; therefore, it is irrelevant to  
25 the case at all.

1 EXAMINER WILLIAMS: Thank you, Ms. Bojko.

2 Ms. O'Brien, do you want to respond to  
3 that objection?

4 MS. O'BRIEN: I would disagree that it is  
5 irrelevant. Ms. Schroder testified that DP&L  
6 reverted from ESP III to ESP I. Therefore -- and she  
7 also testified that the Smart Grid plan is the  
8 application as modified by the settlement. The  
9 application was initially filed when DP&L was  
10 operating under ESP III; so, therefore, the terms of  
11 the Stipulation are relevant to the case and how the  
12 Smart Grid plan was modified.

13 EXAMINER WILLIAMS: Ms. Bojko?

14 MS. BOJKO: Your Honor, the -- since the  
15 withdrawal of the Amended Stipulation, there was a  
16 reversion and that reversion is based on ESP I and  
17 modification to the ESP I. The Commission  
18 specifically stated that the Stip was withdrawn.  
19 Just because a filing was initially made -- made  
20 during a time frame doesn't make it relevant. It's  
21 not relevant to the current gridSMART application or  
22 Stipulation.

23 EXAMINER WILLIAMS: I don't see any  
24 problem with allowing it to come in. And its  
25 relevance can certainly be debated throughout

1 post-hearing brief. So over the objection, we will  
2 allow that to come in.

3 (EXHIBIT ADMITTED INTO EVIDENCE.)

4 MS. BOJKO: Thank you.

5 MS. O'BRIEN: Thank you, your Honor.

6 Okay. Next, I would like to admit OCC  
7 37C which are the consolidated discovery responses to  
8 OCC Interrogatory 19 and 20.

9 EXAMINER WILLIAMS: I have that as pages  
10 1 through 4, 26, 27, and 76; is that correct?

11 MS. O'BRIEN: Let me just check really  
12 quick.

13 MR. IRELAND: I think 1 through 4 were  
14 admitted previously, part of another exhibit.

15 MS. O'BRIEN: Yeah, they were but, you  
16 know, just for -- so the record is clear I think  
17 we'll admit them again as part of this so we don't  
18 just have the random 19 and 20 out there hanging. So  
19 I would prefer to admit the pages that I marked.

20 MR. IRELAND: That's fine. We have no  
21 objection, your Honor.

22 MS. BOJKO: Your Honor, I'm sorry. Could  
23 you repeat that? I had for 37B that it was page 6.

24 EXAMINER WILLIAMS: She is on 37C,  
25 Ms. Bojko.

1 MS. BOJKO: Thank you very much for that  
2 clarification.

3 EXAMINER WILLIAMS: Okay. Anybody else  
4 have an objection they would like to discuss? I will  
5 look for heads. No nodding. All right. We've taken  
6 a few seconds and nobody has responded, so we will  
7 admit 37C.

8 (EXHIBIT ADMITTED INTO EVIDENCE.)

9 MS. O'BRIEN: Okay. The next one OCC 36  
10 which is the docket sheet for Case No.  
11 20-1041-EL-UNC.

12 MS. BOJKO: Your Honor, OMAEG would  
13 object to the admission of a docket sheet. We  
14 pointed out through our objections the docket sheet  
15 speaks for itself. It's not evidence in this case.  
16 It's -- it shouldn't be evidence, and the witness was  
17 not able to really give any insight to it except for  
18 that it existed, and it said what it said.

19 EXAMINER WILLIAMS: Ms. O'Brien?

20 MS. O'BRIEN: Your Honor, I would -- I  
21 would disagree. It is relevant. It shows the  
22 sequence of events leading up to the Stipulation and  
23 consolidation of the cases which is relevant to the  
24 first prong under the three-prong test that the  
25 Commission considers in considering settlement.

1 EXAMINER WILLIAMS: Okay. I don't feel  
2 that the docket sheet in and of itself is evidence.  
3 The docket in that case is part of the overall record  
4 of the Commission, and you are certainly welcome to  
5 bring forward information from that docket sheet, but  
6 we are not going to admit that as a separate exhibit.

7 MS. O'BRIEN: Okay. Fair enough.

8 MS. BOJKO: Thank you.

9 MS. O'BRIEN: Then OCC 35 I guess I am  
10 assuming your Honor's decision will be the same  
11 moving for admission of that.

12 EXAMINER WILLIAMS: I will entertain  
13 argument if you have a different angle or  
14 consideration. Otherwise, if you want to move to  
15 admit, I will deny it, or you can not move it. It's  
16 up to you.

17 MS. O'BRIEN: Well, I will go ahead and  
18 make the motion for admission.

19 EXAMINER WILLIAMS: Okay. Based on the  
20 same rationale used relative to OCC 36, I will deny  
21 the admission of that as well.

22 MS. O'BRIEN: Okay. Let's see, next I  
23 would like to move for admission of OCC 74 which is  
24 the Smart Grid application that was filed in  
25 December 2018.

1 EXAMINER WILLIAMS: Mr. Ireland.

2 MR. IRELAND: No objection, your Honor.

3 EXAMINER WILLIAMS: Anyone else?

4 That's admitted with no objection.

5 That's admitted.

6 (EXHIBIT ADMITTED INTO EVIDENCE.)

7 MS. O'BRIEN: Okay. Next, I will move  
8 for admission of OCC 73 which is the schedules and  
9 workpapers that were attached to the Smart Grid  
10 application.

11 EXAMINER WILLIAMS: Mr. Ireland.

12 MR. IRELAND: No objection, your Honor.

13 EXAMINER WILLIAMS: Anyone else?

14 It's admitted with no objection.

15 (EXHIBIT ADMITTED INTO EVIDENCE.)

16 MS. O'BRIEN: Okay. And finally I'll  
17 move for admission -- oh, I'm sorry. That's not  
18 finally. Next, I will move for admission of OCC 66  
19 which is the PowerForward application -- or, I'm  
20 sorry, the PowerForward report.

21 EXAMINER WILLIAMS: Mr. Ireland?

22 MR. IRELAND: Your Honor, generally  
23 that's -- I mean, it's something that was created by  
24 the Commission, but it would seem to me that it was  
25 used in a very limited basis on cross-examination,

1 and I am not sure that the entire document should  
2 come into evidence; but, you know, at the same time  
3 it was created by the Commission, so if you want to  
4 admit it, that's fine, but I would probably prefer we  
5 just limit it to those portions of the document that  
6 were used on cross-examination.

7 EXAMINER WILLIAMS: Anyone else want to  
8 comment?

9 All right. Ms. O'Brien, rebuttal?

10 MS. O'BRIEN: Yeah. I would just add  
11 that I think a number of parties may be wanting to  
12 use this document throughout the proceeding. It  
13 certainly appeared on several parties' exhibit list.  
14 I'm fine with just admitting those particular pages  
15 that I referred to, but I don't want it completely  
16 excluded because I think it is relevant of what the  
17 Commission has -- what the Commission believes to be  
18 a managerial and a financial audit, and it was used  
19 to help clarify Ms. Schroder's understanding of what  
20 a managerial audit was, so it is relevant to the  
21 settlement.

22 EXAMINER WILLIAMS: I am going to go  
23 ahead and just admit the document. We didn't really  
24 carve through specific pages, and frankly the rest of  
25 the document's relevancy would be pretty -- pretty



1 questionable anyway, so we'll just admit the entire  
2 document.

3 (EXHIBIT ADMITTED INTO EVIDENCE.)

4 MS. O'BRIEN: Okay. And then moving on  
5 finally OCC 75 which is the Commission's entry,  
6 October 27, 2020, entry in this case.

7 EXAMINER WILLIAMS: Mr. Ireland.

8 MR. IRELAND: It's sort of the same  
9 concern with anything else that's on the docket. It  
10 seems to me it's the administrative docket of the  
11 case, and you can make arguments based upon what's  
12 been filed with the Commission, but I am not sure it  
13 in and of itself is relevant and should be evidence.

14 EXAMINER WILLIAMS: I am going to go  
15 ahead and strike the admission of that as well. It  
16 is part of the Commission's record, speaks for  
17 itself, and doesn't need to be admitted as a separate  
18 exhibit.

19 MS. O'BRIEN: Okay. Fair enough.

20 EXAMINER WILLIAMS: I think that  
21 addresses all the exhibits we had identified and  
22 marked. So if there is nothing further,  
23 Ms. Schroder, thank you for your time and testimony.  
24 Have a nice day.

25 MS. BOJKO: Your Honor, may I seek

1 clarification of 37B status? I apologize. Was that  
2 admitted? I thought it was page 6 of the discovery  
3 response.

4 EXAMINER WILLIAMS: It was admitted with  
5 no objection.

6 MS. BOJKO: Thank you.

7 EXAMINER WILLIAMS: You're welcome.

8 Thank you, Ms. Schroder.

9 THE WITNESS: Thank you, your Honor.

10 EXAMINER WILLIAMS: As promised, it's  
11 9:48. Why don't we take -- why don't we take 10? We  
12 will gather back here at 10 o'clock, and we will  
13 bring Mr. Garavaglia here to the stand at that time.

14 Thank you, everyone.

15 (Recess taken.)

16 EXAMINER SCHABO: We are back on the  
17 record. It's 10:03.

18 We just had a brief discussion about how  
19 to handle problems with low bandwidth. Again, if you  
20 experience low bandwidth, good to see you again,  
21 Ms. Cohn, and you need us to stop, just reach out in  
22 the chat function or call us, and we will do that.

23 Otherwise we are on to DP&L's next  
24 witness. So, Mr. Sharkey, if you will please  
25 proceed.

1                   You're on mute. The other fun part of  
2 remote hearings.

3                   MR. SHARKEY: Thank you, your Honor. The  
4 Dayton Power and Light Company would call its next  
5 witness, Gustavo Garavaglia.

6                   MR. SCHMIDT: Mr. Garavaglia, you've been  
7 promoted. Please unmute your audio and enable your  
8 video.

9                   MR. GARAVAGLIA: There you go. Can you  
10 hear me?

11                   EXAMINER SCHABO: Yes.

12                   MR. GARAVAGLIA: Perfect.

13                   EXAMINER SCHABO: All right.

14                   Mr. Sharkey. Oh.

15                   MR. SHARKEY: I believe the witness needs  
16 to be sworn, your Honor.

17                   EXAMINER SCHABO: The other fun part of  
18 remote hearings.

19                   (Witness sworn.)

20                   EXAMINER SCHABO: Thank you very much.

21   - - -

22

23

24

25

1 GUSTAVO GARAVAGLIA M.

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

4 DIRECT EXAMINATION

5 By Mr. Sharkey:

6 Q. Good morning, Mr. Garavaglia. Do you  
7 have before you a copy of the April 1, 2020, direct  
8 testimony of Gustavo Garavaglia M. in Case No. --

9 A. Yes.

10 Q. -- 20-680-EL-UNC?

11 A. Yes.

12 Q. As of the date of that testimony, was the  
13 information contained in it true?

14 A. Yes.

15 Q. And if I asked you the same questions,  
16 would you give me the same answers?

17 A. Yes.

18 MR. SHARKEY: Your Honor, we would  
19 designate the confidential version of that testimony  
20 as DP&L Exhibit 6A and the public version of that  
21 testimony as DP&L Exhibit 6B.

22 EXAMINER SCHABO: So marked.

23 (EXHIBITS MARKED FOR IDENTIFICATION.)

24 MR. SHARKEY: Thank you.

25 Q. (By Mr. Sharkey) Then, Mr. Garavaglia, do

1 you also have before you a copy of the December 23,  
 2 2020, testimony of Gustavo Garavaglia M. in Case Nos.  
 3 19-1121-EL-UNC and 20-1041-EL-UNC?

4 A. Yes.

5 Q. As of the date of that testimony, was the  
 6 information in it accurate?

7 A. Yes.

8 Q. If I asked you the same questions, would  
 9 you give me the same answers?

10 A. Yes.

11 MR. SHARKEY: And, your Honor, we would  
 12 designate that document as DP&L Exhibit 7.

13 EXAMINER SCHABO: So marked.

14 (EXHIBIT MARKED FOR IDENTIFICATION.)

15 Q. (By Mr. Sharkey) And then,  
 16 Mr. Garavaglia, do you also have before you the  
 17 December 23, 2020, Schedules 1 through 10 that were  
 18 also filed in Case Nos. 19-1121 and 20-1041?

19 A. Yes.

20 MR. SHARKEY: And, your Honor, those  
 21 schedules were previously marked as DP&L Exhibit 3.

22 EXAMINER SCHABO: Yes.

23 MR. SHARKEY: With that, your Honor, I  
 24 have no more questions for Mr. Garavaglia. We would,  
 25 of course, move for the admission of 6A, 6B, and 7

1 and renew our motion as to DP&L Exhibit 3.

2 EXAMINER SCHABO: And we will defer  
3 rulings on that until after the examination of the  
4 witness.

5 MR. SHARKEY: All right. Thank you very  
6 much.

7 EXAMINER SCHABO: Are there any parties  
8 other than OCC who have cross for this witness?

9 Seeing no one, Mr. Healey, if you would  
10 like to proceed with your cross-examination.

11 MR. HEALEY: Yes, your Honor. If you  
12 would, I do have one motion to strike, if you will  
13 entertain that right now.

14 EXAMINER SCHABO: I will.

15 MR. HEALEY: Thank you, your Honor. OCC  
16 moves to strike this would be from the December 23  
17 testimony which has been marked Exhibit No. 7, page  
18 31, line 15. That's page 31, line 15, and moving  
19 to -- strike beginning with the words "The agreement"  
20 and then continuing -- continuing through the end of  
21 line 18. This statement made by the witness, he  
22 makes a comment on the Stipulation and Recommendation  
23 and whether he believes that that Stipulation and  
24 Recommendation provides benefits.

25 His testimony is not in support of the

1 stipulation. Testimony in support of the Stipulation  
2 was due on November 30. DP&L filed only the  
3 testimony of Ms. Schroder in support of the  
4 Stipulation. Mr. Garavaglia's December 23 testimony  
5 is on the narrowly focused issue of the retrospective  
6 SEET test for 2018 and 2019, not on the three-part  
7 test. And for that reason this statement in his  
8 testimony is tardy and inappropriate and, therefore,  
9 should be struck.

10 EXAMINER WILLIAMS: Before we get any  
11 more argument, Micah, I'm getting a lot of reverb.  
12 Is there a way to get Mr. Garavaglia on the phone?  
13 That seemed to really fix things yesterday.

14 MR. SCHMIDT: I can try to do that.

15 Mr. Garavaglia, if you look to the top  
16 left of the Webex window, you'll see a tab that says  
17 "Audio & Video."

18 THE WITNESS: Yep.

19 MR. SCHMIDT: If you click on "Switch  
20 Audio," a box will pop up, and it has a box there  
21 where you can enter your phone number and have it  
22 call you. Once it completes that call and you answer  
23 it, it will automatically switch your audio from your  
24 computer audio to your phone.

25 THE WITNESS: Can you hear me now?

1 EXAMINER WILLIAMS: We can. I apologize  
2 for interrupting the proceeding there, but it was  
3 going to be unwieldy. So that seems to be much better  
4 on my end. I think, Mr. Healey, turn it back over to  
5 you, Judge Schabo.

6 EXAMINER SCHABO: Mr. Healey, were you  
7 finished with your presentation of your motion to  
8 strike?

9 MR. HEALEY: I'm sorry. It looked like  
10 Mr. Garavaglia was trying to say something.

11 THE WITNESS: Can your Honor give me one  
12 second?

13 EXAMINER SCHABO: Karen, let's go off the  
14 record for just a minute while we -- while we take  
15 care of some technical issues.

16 (Discussion off the record.)

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

19 All right. We believe we have fixed our  
20 technical difficulty. I am just going to repeat my  
21 question for the record. Mr. Healey, are you  
22 finished with the presentation, the initial  
23 presentation of your motion to strike?

24 MR. HEALEY: Yes, your Honor.

25 EXAMINER SCHABO: Mr. Sharkey, do you



1 have a response?

2 MR. SHARKEY: Yes, your Honor. As  
3 Mr. Healey noted in his argument, the exclusion of  
4 the -- I'm sorry, the provision of the Stipulation  
5 regarding the fact that DP&L passed the retrospective  
6 SEET is directly related to the principal topic of  
7 Mr. Garavaglia's testimony, namely, that the  
8 retrospective SEET test is one that DP&L passes.  
9 This is a -- merely a relatively minor commentary in  
10 his testimony that was included in the Stipulation  
11 and provides benefits in places otherwise described  
12 in his testimony, so I certainly don't think this is  
13 a testimony that is fairly described as one that's in  
14 support of the Stipulation. It's just discussing why  
15 it is that that's -- the Stipulation provision is, in  
16 fact, an appropriate provision.

17 EXAMINER SCHABO: Mr. Healey, any  
18 response?

19 MR. HEALEY: Not really, your Honor.  
20 That's a statement that could have been made on  
21 November 30 by Mr. Garavaglia should DP&L chosen to  
22 have filed testimony for him on that date when it was  
23 due. Likewise, Ms. Schroder could have made that  
24 testimony, so it seems to me that it's an unfair  
25 attempt to shoehorn this into the Stipulation when

1 the December 23 testimony was explicitly about a  
2 specific issue in those previous cases, not about the  
3 Stipulation.

4 EXAMINER SCHABO: I am going to overrule  
5 the motion to strike his statements that it passes  
6 the -- that the statement regarding the Stipulation  
7 is specific to the SEET test which is the subject of  
8 his testimony, so the motion to strike will be  
9 denied.

10 MR. HEALEY: With that I am ready to  
11 proceed with cross if the witness is ready.

12 THE WITNESS: I am ready.

13 EXAMINER SCHABO: Thank you.

14 - - -

15 CROSS-EXAMINATION

16 By Mr. Healey:

17 Q. Mr. Garavaglia, just now when your  
18 counsel was introducing your testimony, he asked you  
19 if your testimony -- I am talking about both, if both  
20 pieces of your testimony were accurate as of the date  
21 they were filed. Do you recall him asking you that?

22 A. I do recall that.

23 Q. Are there portions of either of your  
24 pieces of testimony that are no longer accurate?

25 A. Not that I can think of.

1 Q. And you didn't make any corrections to  
2 your filed testimony when it was introduced, correct?

3 A. That's correct.

4 Q. You are testifying as an expert witness  
5 today; is that right?

6 A. Can you repeat that question, please?

7 Q. Sure. Are you testifying as an expert  
8 witness today?

9 A. That's correct.

10 Q. And what do you consider to be your area  
11 of expertise?

12 A. Well, I'm the CFO of DP&L, so my areas of  
13 expertise would be areas related to finance overall.

14 Q. Are you an economist?

15 A. Are you asking is my Bachelor Degree in  
16 economy?

17 Q. No. I am asking if you consider yourself  
18 an economist as a profession.

19 A. No. I see myself as a finance person.

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

21 A. That's correct, I am not an attorney.

22 Q. And you are not rendering any legal  
23 opinions with your testimony today, correct?

24 A. That's correct.

25 Q. You are aware that a Stipulation was

1 filed in this case signed by DP&L and various other  
2 parties, correct?

3 A. When you mean this case, which case are  
4 you referring to?

5 Q. I am referring to all of the cases that  
6 we are here before the PUCO.

7 A. Can you be more specific? Sorry.

8 Q. Sure. Are you aware whether a  
9 Stipulation was filed in these consolidated  
10 proceedings in October of 2020?

11 A. Yes, I am.

12 Q. And have you reviewed that Stipulation?

13 A. Yes, I have.

14 Q. Have you reviewed the entire thing?

15 A. Yes, I have.

16 Q. When did you first review the Stipulation  
17 that was filed in this case?

18 A. I don't remember the date that I first  
19 reviewed the Stipulation.

20 Q. Was it before you filed your December 23  
21 testimony?

22 A. Yes.

23 Q. Are you aware of the PUCO's three-part  
24 test for settlements?

25 A. I am aware that a three-part test exists.

1 I believe Ms. Schroder has just been crossed on  
2 this -- on this test.

3 Q. Do you know what the three parts of the  
4 test are?

5 A. I'm not an expert on this test.

6 Q. Right. I understand you are not an  
7 expert. My question was do you know what the three  
8 parts of the test are?

9 A. I do not know.

10 Q. Do you know what any of the three parts  
11 of the test are?

12 A. I probably heard about them in the past,  
13 but if you ask me to enumerate the three, I have no  
14 idea.

15 Q. And so it would be fair to say then that  
16 your testimony does not provide any opinion on the  
17 three-part test, correct?

18 A. Well, specific on the three-part test, it  
19 does not.

20 Q. Are you familiar with the term "more  
21 favorable in the aggregate"?

22 A. Yes, I am.

23 Q. And what do you understand that to mean?

24 A. I -- my high level understanding is that  
25 it is a test that the utilities in Ohio from time to

1 time are asked to compare what's more favorable in  
2 the aggregate for several stakeholders, if an ESP or  
3 MRO.

4 Q. And does your testimony provide any  
5 opinion on whether DP&L's ESP I is more favorable in  
6 the aggregate than an MRO?

7 A. My testimony filed back on April 1, 2020,  
8 I do -- I do come to the conclusion that the ESP I is  
9 more favorable in the aggregate than the MRO.

10 Q. And in your December 23 testimony, do you  
11 address that issue, or no?

12 A. No, I don't think I talk about this on my  
13 December 23 testimony.

14 Q. You are aware that the Stipulation in  
15 this case addresses a proposal by DP&L for grid  
16 modernization, correct?

17 A. Yes. There are several proposals of  
18 Smart Grid that are incorporated to the Stipulation.

19 Q. And are you an expert on Smart Grid?

20 A. I understand high level. I definitely  
21 cannot say I am an expert in Smart Grid.

22 Q. And are you in your testimony taking any  
23 position on the Smart Grid plan that is found in the  
24 settlement?

25 A. I think as part of given my conclusion of

1 my testimony, as you have read, I mentioned that the  
2 Stipulation overall is efficient to customers and  
3 that includes Smart Grid.

4 Q. Are you providing any opinion to the  
5 Commission on whether you personally believe that the  
6 Smart Grid plan proposed in the Stipulation will be  
7 cost effective?

8 A. Again, I think I just mentioned I am not  
9 an expert on Smart Grid, and I am not testifying  
10 around Smart Grid, but it is my personal belief that  
11 Smart Grid investments at DP&L will bring several  
12 benefits to our customers.

13 Q. Were you -- were you listening to the  
14 hearing this morning when Ms. Schroder was being  
15 cross-examined?

16 A. Yes, I was.

17 Q. Do you recall talking about some  
18 workpapers that were marked as DP&L Exhibit 5 in  
19 support of the Smart Grid plan that were  
20 confidential? Do you remember that?

21 A. Was that the one that was provided by  
22 DP&L this morning?

23 Q. Yes.

24 A. Yes, I do remember that.

25 Q. And do you recall Ms. Schroder saying

1 that she worked with other people at DP&L who  
2 assisted in creating those workpapers? Do you recall  
3 that?

4 A. Yes, I do recall that.

5 Q. Were you one of the people involved in  
6 the process of creating those workpapers?

7 A. No, I was not. I just saw the final  
8 results.

9 Q. Are you familiar with DP&L's  
10 Infrastructure Investment Rider?

11 A. I know that we have this rider as part of  
12 our ESP I.

13 Q. And as part of your testimony, do you  
14 make any recommendations regarding the Infrastructure  
15 Investment Rider?

16 A. Again, as I think I just mentioned, you  
17 tried to strike from my testimony, I do believe that  
18 the overall Stipulation will be extremely beneficial  
19 for our customers, and the Stipulation does address  
20 Smart Grid investments that would be populated  
21 through the IIR.

22 Q. Let's look -- do you have a copy -- I  
23 assume you have a copy in front of you of your  
24 April testimony, correct, the one that was marked as  
25 Exhibit 6?



1           A.    This morning, yes.

2           Q.    And if you could turn to page 3 of that  
3 testimony.

4                   EXAMINER SCHABO:  I would just like to  
5 briefly ask the witness if you have the public  
6 version in front of you or if you have the  
7 confidential version in front of you?

8                   THE WITNESS:  I think it will be easy for  
9 me to know if it is confidential or not.  I have a  
10 red box on whatever is confidential.

11                  EXAMINER SCHABO:  Okay.  Just be careful  
12 of that, please.

13                  THE WITNESS:  Okay.  Thank you.

14           Q.    (By Mr. Healey) And I would like you to  
15 look at line 14.  And on line 14 you state that  
16 "DP&L's infrastructure is aging and very much needs  
17 additional investment."  Do you see that?

18           A.    Yes, I do see that.

19           Q.    And then on the next line you say  
20 "45 percent of DP&L's substation assets are over 30  
21 years old while 24 percent of those assets are over  
22 50 years old."  Do you see that?

23           A.    I do see that, yes.

24           Q.    Did you do any analysis to compare those  
25 numbers to comparable utilities?

1           A.    I did not -- I do not do this analysis  
2 but to me pretty aging infrastructure.

3           Q.    Do you know what percentage of AEP Ohio's  
4 substation assets are over 30 years old?

5           A.    No, I do not know that.

6           Q.    Do you know what percentage of any other  
7 Ohio utility's substation assets are over 30 years  
8 old other than DP&L?

9           A.    No, I do not know that.

10          Q.    On the same page on line 18, you state  
11 that "a large portion of DP&L's meters are obsolete  
12 electromechanical meters." Do you see that?

13          A.    Yes, I do.

14          Q.    Can you tell me what you mean by obsolete  
15 here?

16          A.    They are not smart.

17          Q.    So your -- your opinion is any meter that  
18 is not a smart meter is obsolete; is that correct?

19          A.    Well, I am not -- I am not a technical  
20 person, so it's very hard for me to be that narrow  
21 so.

22          Q.    Well, I am asking you you used the  
23 word -- you used the word "obsolete." I am trying to  
24 understand what you mean when you use that word.

25          A.    Well, to me those meters have been in the

1 field for many, many years now. They are -- most  
2 certainly they are not recent. They are not new.  
3 They are not smart. They cannot be remotely  
4 measured, need to send a person there every month or  
5 so to take a measure. So that's what I mean.

6 Q. When one of those meters breaks, does  
7 DP&L replace it?

8 A. I'm not a technical person, so I am not  
9 an expert in that but that's -- that's my  
10 understanding.

11 Q. And if one of these electromechanical  
12 meters breaks, does DP&L replace it with a smart  
13 meter?

14 A. I do not know the answer for this  
15 question.

16 Q. On the same page on line 19 to 20, you  
17 state that "DP&L's system includes a 0 percent of  
18 rollout of advanced metering infrastructure." Do you  
19 see that?

20 A. Yep.

21 Q. When you say advanced metering  
22 infrastructure, are you talking about smart meters?

23 A. Yes.

24 Q. So your testimony is that DP&L does not  
25 have any smart meters in its territory; is that

1 right?

2 A. Yes, that's right. That's what it says.

3 Q. Okay. So when -- so when a customer has  
4 an electromechanical meter and it breaks, DP&L  
5 replaces it with another electromechanical meter,  
6 correct?

7 A. That is -- that would be my  
8 understanding.

9 Q. And so if it's your contention that those  
10 meters are obsolete, why is DP&L putting new ones in  
11 people's homes?

12 A. I think I just mentioned to you I am not  
13 a -- I am not a technical person and do not oversee  
14 our supply chain or technical procurement process, so  
15 I'm afraid I cannot answer this question.

16 Q. So is it fair to say then that you don't  
17 actually know whether those meters are obsolete?

18 A. I -- I don't think so. Again, you are  
19 trying to imply that all electromechanical meters are  
20 obsolete. That's -- that's probably not necessarily  
21 true. And I don't think I have technical expertise  
22 to state that.

23 Q. Do -- does DP&L use these  
24 electromechanical meters to measure a customer's  
25 usage and bill them?

1           A.    Yes.

2           Q.    And certainly you would agree that DP&L  
3 bills customers accurately, correct?

4           A.    Can you repeat that question, please?

5           Q.    Yes.  You would agree that when DP&L  
6 bills a customer, those bills are accurate, correct?

7           A.    Yes.

8           Q.    I would like to come back to the  
9 statement you made about 0 percent rollout of  
10 advanced metering infrastructure.  Is there any  
11 reason you can think of that was -- that DP&L could  
12 not choose to roll out advanced metering  
13 infrastructure?

14          A.    Well, I am afraid I can't answer this  
15 question.  I don't fully understand all the  
16 regulatory constructs or technical aspects that are  
17 involved in this issue.

18          Q.    Are you familiar with the term "return of  
19 and on a utility's investment"?

20          A.    Yes, I am familiar with this concept.

21          Q.    And what does that concept mean to you?

22          A.    Well, it means that when I -- a utility  
23 makes a prudent investment in its grid, it's -- the  
24 utility basically should be remunerated for the  
25 investment by getting a return of basically

1 investment the utility has made and a return on based  
2 on the squared average cost of capital over the  
3 useful life of the asset.

4 Q. Let's jump to page 4 of that same  
5 testimony. And on line 3 to 4, you note that "AES  
6 plans to invest \$300 million in DP&L over the next  
7 two years." Do you see that part of your testimony?

8 A. I do see that.

9 Q. And then on -- you continue on line 5 and  
10 you say "AES plans to make those investments because  
11 DP&L needs that money to fund necessary  
12 infrastructure improvements including Smart Grid  
13 investments and improve DP&L's capital structure."  
14 Do you see that?

15 A. Yes, I do see that.

16 Q. Now, when you use the phrase  
17 "infrastructure improvements," you were referring to  
18 capital -- capital investments, correct?

19 A. Yes, that's correct.

20 Q. And as we just discussed, when a utility  
21 makes a capital investment, it expects to earn a  
22 return of and on that investment, correct?

23 A. I believe that applies to all utilities  
24 in the country, yes.

25 Q. Right. So the 300 million coming from

1 AES, since it will be used for capital investments,  
2 AES will expect to earn a return of and on that  
3 investment, correct?

4 A. That's usually why a company makes  
5 investments in its subsidiaries, to get a balanced  
6 return over the risk that a company has.

7 Q. Right. So the 300 million from AES you  
8 would consider to be an investment in a subsidiary.  
9 It's not a charitable donation or benevolent, you  
10 know, handout, right? It's an investment.

11 A. It is an investment, yes.

12 Q. Let's look at page 5 of the same  
13 testimony, please. And starting at line 5 on page 5,  
14 you state that "DP&L is subject to some regulatory  
15 risks that other Ohio utilities are not subject to,"  
16 correct?

17 A. That's correct.

18 Q. And the first one you identify on line 8  
19 is that DP&L does not have a Distribution Investment  
20 Rider, correct?

21 A. That's correct.

22 Q. And you are aware that as part of DP&L's  
23 ESP III, it did have a Distribution Investment Rider,  
24 correct?

25 A. Yes, but when I made this -- this filing

1 on April 1, 2020, DP&L was not operating on ESP III.  
2 We were operating on ESP I.

3 Q. Right. And it's operating under ESP I  
4 because DP&L voluntarily withdrew from ESP III,  
5 correct?

6 A. This does not change the fact when I  
7 filed my testimony, we were operating under ESP I,  
8 and ESP I we do not have a distribution rider.

9 Q. I am not trying to dispute that. I am  
10 asking you it was DP&L's decision to withdraw from  
11 ESP III, correct?

12 A. Late 2019, DP&L filed with the PUCO to  
13 withdraw from the ESP III.

14 Q. Right. And so the fact that DP&L doesn't  
15 have a Distribution Investment Rider is the result of  
16 a choice that DP&L made, correct?

17 A. I do not agree with this -- with your  
18 statement.

19 Q. And what part of it don't you agree with?

20 A. Well, the reason why the DP&L withdrew  
21 from the ESP III is because of a material -- we had a  
22 material change in our ESP III, and we followed our  
23 legal rights at the time to withdraw from our  
24 Stipulation; and as a result, we went back to ESP I.

25 Q. Right. You are not -- you are not



1 suggesting DP&L was required to go back to the ESP I,  
2 correct?

3 A. Well, in late 2019, DP&L had no  
4 obligation on going back to ESP I.

5 Q. Right. So DP&L made a decision and that  
6 decision was we would like to revert to ESP I,  
7 correct?

8 A. I think I just answered the question that  
9 DP&L in late 2019 filed with the PUCO to withdraw  
10 from the ESP III.

11 Q. Right. And one effect of that decision  
12 was that you chose an option that would end your  
13 Distribution Investment Rider, correct?

14 A. I only say -- it doesn't change the fact  
15 when I filed my testimony on April 1, 2020, we were  
16 operating in the ESP I, and ESP I we do not have a  
17 Distribution Mechanism Rider.

18 MR. HEALEY: Your Honor, can I get an  
19 instruction for the witness to answer my question?  
20 It is really not a difficult question, and he is  
21 refusing to answer.

22 EXAMINER SCHABO: I guess my question is  
23 which of your questions do you want an answer to?

24 MR. HEALEY: Sure. I will ask it again.

25 Q. (By Mr. Healey) Mr. Garavaglia, the

1 reason DP&L does not have a Distribution Investment  
2 Rider is because DP&L chose to withdraw from ESP III,  
3 correct?

4 A. I believe I answered this question  
5 already, and my answer was that DP&L filed with the  
6 PUCO in late 2019 to withdraw from the ESP III.

7 Q. So that's a "yes."

8 A. Yes. DP&L filed with the PUCO to  
9 withdraw from the ESP III back in late 2019.

10 Q. I am not asking you what DP&L filed. I  
11 am asking you did DP&L make a choice to withdraw from  
12 ESP I thus ending the Distribution Investment Rider?

13 MR. SHARKEY: I am going to object, your  
14 Honor. I believe Mr. Healey asked that question five  
15 or six times now, and Mr. Garavaglia has answered  
16 about five or six times now.

17 EXAMINER SCHABO: I'm not -- I think  
18 there is a lot to that question. To the extent that  
19 it's a yes/no question, Mr. Garavaglia has not  
20 specifically answered the question. If Mr.  
21 Garavaglia feels that he cannot answer that question  
22 with a yes/no answer, I would like him to express  
23 that. So in answer to Mr. Healey's question, which I  
24 will ask the court reporter to read back so there is  
25 no confusion, "yes," "no," or "I cannot answer that

1 question."

2 (Record read.)

3 THE WITNESS: And my answer, your Honor,  
4 would be, yes, back in late 2019, DP&L made the  
5 decision based on the latest events to withdraw from  
6 ESP III and revert back to ESP I, and by the time I  
7 filed my testimony on April 1, 2020, the ESP I did  
8 not contain a Distribution Investment Rider.

9 Q. (By Mr. Healey) And so DP&L could have  
10 chosen to continue on with ESP III, correct?

11 A. In late 2019, this was, of course, one of  
12 the possibilities.

13 Q. And if it had done so, it would still  
14 have a Distribution Investment Rider, correct?

15 A. Yes. If it had decided not to withdraw  
16 from the ESP III, DP&L would still have a DIR.

17 Q. And since that time in late '19 when you  
18 withdraw from ESP I, have you filed an application  
19 for a new ESP?

20 A. No. We reverted back to ESP I, and after  
21 that, we have not filed an application for an ESP.

22 Q. And that was your choice as well, right?

23 A. Quite honestly we had so many things  
24 going on, yeah, we decided not to file an ESP.

25 Q. Let's move to page 6 on line 3. You also

1 mention that DP&L does not have a decoupling rider.

2 Do you see that?

3 A. Yes, I do see that.

4 Q. And are you aware that under ESP III,  
5 DP&L did have a decoupling rider?

6 A. Yes, I am aware of that.

7 Q. And on line 12 of page 6 of your  
8 testimony, you cite a ruling from PUCO Case 19-2080.  
9 It's a FirstEnergy case. Do you see that?

10 A. I do see that.

11 Q. Do you have a copy of that ruling in  
12 front of you?

13 A. I don't think I do.

14 Q. Okay. We will see if we can proceed  
15 without it, but if we need to cover that, we can.  
16 Are you aware that FirstEnergy's decoupling rider  
17 that you reference in that case is not part of DP&L's  
18 electric -- sorry. Let me start over.

19 Are you aware that FirstEnergy's  
20 decoupling rider as approved in Case 19-2080 was not  
21 part of FirstEnergy's electric security plan?

22 A. I'm not -- not an expert, but I believe I  
23 have heard that FirstEnergy's decoupling was approved  
24 under House Bill 6 or something like that.

25 Q. Right. And has DP&L filed an application

1 with the Commission seeking decoupling under House  
2 Bill 6 to your knowledge?

3 A. No, I don't think we have.

4 Q. And are you aware of any restriction that  
5 would prevent DP&L from doing so?

6 A. So although we have not filed a  
7 decoupling application under House Bill 6, we did  
8 file with the PUCO a request to defer decoupling with  
9 the PUCO and this process -- and this proceeding is  
10 still open.

11 Q. Sure. My question is are you aware of  
12 anything prohibiting DP&L from filing an application  
13 for decoupling under House Bill 6?

14 A. Taking aside for a second there is a lot  
15 of discussion potentially -- I don't know how exactly  
16 to say, but to potentially replace House Bill 6  
17 currently, I don't think there's anything else that  
18 would prevent DP&L from making that application.

19 Q. Also on page 6 at line 19, you mention  
20 that DP&L has no uncollectible rider. Do you see  
21 that?

22 A. Yes, I do see that.

23 Q. And again, DP&L had an uncollectible  
24 rider as part of its ESP III, correct?

25 A. That's right.

1           Q.    Are you aware of any other Ohio utilities  
2 that currently have a rate stabilization charge in  
3 their ESPs?

4           A.    I don't think I can answer this question.  
5 I don't know the answer to this question.

6           Q.    So when comparing the relative risk of  
7 Ohio utilities, you don't know how the RSC compares  
8 to what other utilities have; is that accurate?

9           A.    Yes. I don't know if other utilities  
10 have an RSC or not.

11          Q.    I would like to move to page 26 of the  
12 same testimony, please. And on line 8 you start to  
13 answer a question about what the differences are  
14 between the models for DP&L's ESP and hypothetical  
15 MRO. Do you see that question there?

16          A.    I do see that.

17          Q.    In your response you say there are three  
18 differences, and the first one you identify is that  
19 DP&L will recover Smart Grid investments through the  
20 IIR through an ESP, correct?

21          A.    Yes, that's correct.

22          Q.    And you believe a similar IIR would not  
23 be available in an MRO, correct?

24          A.    That would be my understanding, yes.

25          Q.    And so under an MRO, if DP&L were to make

1 Smart Grid investments, it would have to recover  
2 those through a base rate case, correct?

3 A. That would be my understanding, yes.

4 Q. And on line 15, you -- you state "DP&L  
5 does not project to have a distribution rate case  
6 during the remaining modeled years." Do you see that  
7 language?

8 A. Well, I think what the sentence says here  
9 is DP&L is not planning to file another distribution  
10 rate case within a certain date during those years.

11 Q. So are you saying that -- I guess we'll  
12 jump to it. DP&L, in fact, filed a rate case at the  
13 end of 2020, correct?

14 A. We did, yes.

15 Q. And in your projections that you filed  
16 with this testimony, did you account for any rate  
17 increase that might occur in that rate case?

18 A. Yes, I have.

19 Q. Let's move to page 27 of your testimony,  
20 please. And on line 3 to 4, you mention that the MRO  
21 model for DP&L assumed there would be a financial  
22 integrity charge instead of RSC, correct?

23 A. That's correct.

24 Q. Actually let's move on to page 28. And I  
25 would like to look at page 28, line 5. There you

1 state that "The retail revenues reflected in the  
2 company's pro forma financial statements include  
3 tariff rates as established in DP&L's distribution  
4 rate case, Case 15-1830." Do you see that?

5 A. I do see that.

6 Q. And so that would not be the rate case  
7 that DP&L just filed in December or November of 2020,  
8 correct?

9 A. That's correct. I hope you keep reading  
10 the paragraph through the end.

11 Q. Sure. I am just asking about that  
12 sentence right now.

13 You can put that testimony aside for now.  
14 Let's move on to your other testimony from  
15 December 2020, please.

16 A. I have it in front of me.

17 Q. Thank you. And on page 2, lines 9 --  
18 around 9 to 11, you reference the multiple scenarios  
19 that you and Witness Malinak prepared regarding the  
20 retrospective SEET test, correct?

21 A. That's correct.

22 Q. And you understand that there are five  
23 scenarios for 2018, correct?

24 A. Yes, five for 2018 and five for 2019.

25 Q. Right. And those are -- those are the 10



1 schedules that you -- that DP&L filed that you and  
2 Mr. Malinak jointly sponsored some of. Some of them  
3 you individually sponsored; is that correct?

4 A. Yes, that's correct.

5 Q. And you agree that under each of those  
6 scenarios, DP&L has calculated a different return on  
7 equity, correct?

8 A. Yes, that's right.

9 Q. As part of your testimony, are you asking  
10 the PUCO to adopt a specific return on equity for  
11 2018 for purposes of the SEET?

12 A. Yes. I believe as part of my testimony,  
13 I have I believe it's Schedule 1 and Schedule 6 as  
14 the base case for 2018 and 2019 respectively.

15 Q. What does return on equity mean to you?

16 A. Return on equity to me means what the  
17 shareholder realizes of pertinence divided by, as  
18 appears strictly an accounting standpoint, by the  
19 equity in the balance sheet, but in my opinion it  
20 should even be the market value for the -- for the  
21 company.

22 Q. I would like to look at Schedule 1.

23 A. I have it.

24 Q. Thank you. And at the top of this  
25 schedule it says "Witnesses Responsible," and then it

1 says your name, Garavaglia, and Malinak, right?

2 A. That's correct.

3 Q. Are there particular parts of this  
4 schedule that you are responsible for as opposed to  
5 Mr. Malinak?

6 A. Mr. Malinak, I think, is supporting the  
7 asset deferments, but I -- I feel comfortable talking  
8 about it.

9 Q. So is there anything on this schedule  
10 that you don't feel comfortable talking about?

11 A. No. I don't think so.

12 Q. Are you aware of the Supreme Court of  
13 Ohio's recent ruling in the Ohio Edison case from  
14 December of 2020?

15 A. I may be not at the right page, but I  
16 believe I am, yes.

17 Q. And did you -- did you review that  
18 opinion?

19 A. Not as a lawyer but I did read through  
20 it.

21 Q. Did you read the whole thing?

22 A. I don't think I read the opinions and  
23 comments from each of the judges. I just read the  
24 main -- the main thing, I think.

25 Q. Do you have in front of you a copy of the

1 application that DP&L filed in Case 19-1121 that was  
2 admitted into the record as OCC Exhibit 17?

3 A. Give me one second. It is my -- is it  
4 the original 2018 Stipulation?

5 Q. Correct, that Case 19-1121.

6 A. I have it in front of me.

7 Q. And have you reviewed this application  
8 previously?

9 A. Yes, I have.

10 Q. And have you reviewed the attached  
11 testimony of Craig A. Forestal?

12 A. Yes, I have.

13 Q. Do you know whether DP&L filed an amended  
14 application in this case after this one?

15 A. I believe we just did on December 23,  
16 2020.

17 Q. You filed an amended application in  
18 addition to your testimony?

19 A. I maybe not sure what it means with your  
20 question. Can you be more specific, please?

21 Q. Did you review Mr. Forestal's testimony  
22 before you filed your December 23 testimony?

23 A. Yes, I have.

24 Q. And did you review the application as  
25 well before you filed your testimony on December 23?

1           A.    Which application?  Craig Forestal's  
2 testimony?

3           Q.    No.  The application, the very first page  
4 says "Application of The Dayton Power and Light  
5 Company."

6           A.    Yes, I have.

7           Q.    And you see in this application that it  
8 says at the end of the first paragraph that the SEET  
9 threshold is 12 percent, correct?

10          A.    As when we filed this application, DP&L  
11 was operating in the ESP III, I do see that here,  
12 yes.

13          Q.    Right.  And you are aware that DP&L was  
14 operating under ESP III for the entire year 2018,  
15 correct?

16          A.    Although -- although the case has -- the  
17 case hasn't been resolved yet but, yes, during 2018,  
18 DP&L was operating under ESP III for the entire year.

19          Q.    I would like to move on to the 2019 SEET  
20 application.  And that was filed in Case 20-1041 and  
21 it was admitted as OCC Exhibit 18.  Do you have that  
22 with you?

23          A.    Give me one second.

24          Q.    Sure.

25          A.    I have it.

1 Q. And did you review this application  
2 before filing your December 23 testimony?

3 A. Yes, I have.

4 Q. And did you review the attached testimony  
5 of Karin Nyhuis before filing your December 23  
6 testimony?

7 A. Yes, I have.

8 Q. And in this application on the first  
9 page, it states that "As supported in testimony by  
10 Company Witness Karin Nyhuis, the Company's adjusted  
11 ROE excluding DMR revenues for calendar year 2019 is  
12 11.6%." Do you see that sentence?

13 A. I can read it.

14 Q. Sure. So you are aware that when  
15 Ms. Nyhuis filed her testimony, she excluded the DMR  
16 revenues for 2019, correct?

17 A. Yes, she did exclude the DMR revenues  
18 from 2019.

19 Q. And in your opinion they should continue  
20 to be excluded, correct?

21 A. Yes. It is my opinion they should  
22 continue to be excluded. As I just discussed, I  
23 provided several scenarios as part of my testimony.  
24 And many of them DMR is excluded and provided reasons  
25 for why I believe this should be the case.

1 Q. Right. And one of those schedules where  
2 you excluded it was Schedule 6, correct?

3 A. I think so. This is the base case for  
4 2019.

5 Q. Right. And you stated earlier this is  
6 the case that you are asking the Commission to adopt,  
7 correct?

8 A. Yes. That's right.

9 Q. And as we see in this application here,  
10 DP&L stated that the ROE for 2019 when it filed the  
11 application was 11.6 percent, correct?

12 A. Well, it's included here in Ms. Nyhuis's  
13 testimony.

14 Q. Right. And you, however, in Schedule 6  
15 say that the return on equity is 2 percent, correct?

16 A. That's correct, yes.

17 Q. So -- so generally speaking when DP&L  
18 filed the application, the ROE was almost 12 percent.  
19 Then we get a ruling from the Supreme Court in the  
20 FirstEnergy case, and now all of a sudden, it's  
21 dropped to only 2 percent. That's your testimony?

22 A. Well, it's not all of a sudden. We -- we  
23 just -- initially we were well below the threshold  
24 excluded in the DMR, and we just were trying to have  
25 a more streamline regulatory process. But the

1 adjustment that I recommend that the Commission  
2 should adopt, they are -- they should be taken into  
3 consideration. They should be considered as part of  
4 the calculation.

5 So they are -- as we had the opportunity  
6 to supplement our original filing, we think it's more  
7 than appropriate for the Commission to take those  
8 adjustments into consideration.

9 Q. Now, you just said that when you filed  
10 the application originally for 2019, you wanted to  
11 streamline it; is that accurate?

12 A. We wanted a streamlined regulatory  
13 process.

14 Q. And you believed at the time the  
15 11.6 percent ROE was below the SEET threshold,  
16 correct?

17 A. Both for 2018 and 2019 excluding the DMR  
18 as per the Stipulation we were operating under, we  
19 were well below the then SEET threshold.

20 Q. So I just want to confirm for 2019, you  
21 were below the SEET threshold because 11.6 percent is  
22 lower than 12 percent, correct?

23 A. Well, last time I checked 11.6 percent is  
24 below 12 percent.

25 Q. Right. And that's why you concluded for

1 2019 that there were no significantly excessive  
2 earnings, correct?

3 A. Again, we were trying to have a more  
4 streamlined regulatory process and tried to be as  
5 plain and straightforward as possible in order to  
6 help the PUCO and so on. So when we originally filed  
7 it, our ROE then was 11.6 percent.

8 Q. And when you originally filed it, you  
9 were operating under the assumption that the SEET  
10 threshold for 2019 was 12 percent, correct?

11 MR. SHARKEY: I am going to object to  
12 that question, your Honor, because it's both  
13 privileged and work product as to what it is that  
14 Mr. Garavaglia may have believed was the applicable  
15 SEET threshold.

16 MR. HEALEY: Your Honor, the application  
17 right here says this amount is below the SEET  
18 threshold. I am asking him what the SEET threshold  
19 is.

20 MR. SHARKEY: That wasn't the question.  
21 You asked Mr. Garavaglia what he believed and that  
22 would have been a result of either privileged  
23 communications or work product.

24 I believe you are on mute, your Honor.

25 EXAMINER SCHABO: Thank you, Mr. Sharkey.



1 There seems to be a difference of opinion as to what  
2 the actual question is so if Mr. Healey could either  
3 reask his question or instruct the court reporter to  
4 reread his question, I would appreciate it.

5 MR. HEALEY: Sure. I'll reask.

6 Q. (By Mr. Healey) Look at page 1 of the  
7 2019 SEET application. It says that 11.6 percent is  
8 below the SEET threshold. Do you see that?

9 A. Yeah, I see that.

10 Q. And that was the SEET threshold for 2019  
11 as stated in this application?

12 A. We -- we don't have a SEET threshold, I  
13 believe, when we filed -- originally filed and that's  
14 why you don't see any number here. We filed that, I  
15 believe, in May 2020 and we were operating under ESP  
16 I and ESP I does not contain a SEET threshold.

17 Q. So if there is no SEET threshold, then  
18 how can you possibly know that 11.6 is below the SEET  
19 threshold?

20 A. It's -- it's -- I mean, it's well below  
21 any other SEET thresh -- SEET threshold that I have  
22 in my view, in my understanding. I am not an expert  
23 that has been ever defined or approved by the  
24 Commission.

25 Q. And you are aware that DP&L operated

1 under ESP III from January 1, 2019, all the way  
2 through December 18, 2019, correct?

3 A. That's correct.

4 Q. And so for nearly the entire year of  
5 2019, you were, in fact, operating under ESP III,  
6 correct?

7 A. It doesn't change the fact that the SEET  
8 threshold -- this case hasn't been closed yet because  
9 the case is still pending, and the DP&L is operating  
10 under ESP I which does not contain a SEET threshold.

11 Q. Right. My question was you were  
12 operating under ESP III for almost all of 2019,  
13 correct?

14 A. We -- we were operating under ESP III  
15 for, as you stated, from January 1 through  
16 December 18, I believe.

17 Q. Let's turn to page 6 of your December  
18 testimony, please.

19 EXAMINER SCHABO: Would you repeat that  
20 page reference, Mr. Healey?

21 MR. HEALEY: Yes, page 6 and it's going  
22 to be line 21.

23 A. Sorry. Retrospective?

24 Q. The retrospective. I think I am done  
25 with the SEET/MFA so assume retrospective from now

1 on.

2 A. Okay. Page 6?

3 Q. Page 6, starting at line 20, and the  
4 question asked of you here is "What was the purpose  
5 of the DMR," and you state on line 21 "The purpose of  
6 the DMR was to allow DP&L to improve its financial  
7 integrity (including its credit ratings) so that DP&L  
8 had the financial resources necessary to invest in  
9 its system and implement Smart Grid." Do you see  
10 that?

11 A. Yes, I do see that.

12 Q. Do you believe that the purpose of the  
13 RSC is also to improve DP&L's financial integrity  
14 including its credit ratings so that DP&L has the  
15 financial resources necessary to invest in its  
16 system?

17 A. Well, actually the main purpose of the  
18 RSC is to cover DP&L's risk of being the last -- the  
19 POLR risk as the provider of last resort and also  
20 cost associated to it, but the RSC also has a  
21 component of providing more financial stability for  
22 DP&L.

23 Q. Have you quantified the costs that DP&L  
24 incurs that you -- wait. Start over.

25 Have you quantified the costs that you

1 believe DP&L incurs as provider of last resort?

2 A. No. I don't think I have ever quantified  
3 this.

4 Q. So you can't say what portion of the  
5 \$79 million per year in RSC charges goes towards POLR  
6 obligation, can you?

7 A. DP&L does have their POLR risk, and I do  
8 have costs to manage this risk, but I have never  
9 quantified how much that is.

10 Q. Let's move to page 20 of your December  
11 testimony.

12 A. I'm there.

13 Q. And starting on line 11 there is a  
14 heading of "The Difference Between the DMR and the  
15 RSC." Do you see that?

16 A. Yes, I see that.

17 Q. And on page 21, line 13, you state that  
18 "the difference between the DMR and the RSC is what  
19 should be included in the SEET." Do you see that?

20 A. I see that. I think this is one of the  
21 scenarios I provided when I stated that I believe  
22 that the DMR should be excluded, but in the scenario  
23 where the Commission believes it should not be  
24 excluded, then they should evaluate the difference  
25 between the III ESP, yes.

1           Q.    Thank you for clarifying.  I understand  
2 your position on that.  Now, you make this adjustment  
3 in your Scenario 5, correct, which would be Schedules  
4 5 and 10?

5           A.    I would need to confirm that.  Give me  
6 one second.

7           Q.    Sure.

8           A.    Yes.  It's Schedule 5.

9           Q.    Let's look -- Schedule 5 for 2018 and  
10 Schedule 10 for 2019, correct?

11          A.    That's correct, yes.

12          Q.    Let's look at Schedule 5 then.  And on  
13 Schedule 5 the starting point on line 2 is net income  
14 of about 86.7 million, correct?

15          A.    That's correct, yes.

16          Q.    And that 86.7 million includes the full  
17 amount of the DMR for 2018, correct?

18          A.    Strictly from an accounting standpoint,  
19 yes, it does.

20          Q.    On line 4 you subtract about  
21 62.7 million.  Do you see that?

22          A.    Yes, I do.

23          Q.    And can you tell me how you derived that  
24 \$62.7 million number?

25          A.    To be honest with you, I can't remember

1 the calculation so.

2 Q. And so given that you can't remember the  
3 calculation, you wouldn't be able to give me any more  
4 details on how -- how you got to that number, what  
5 the underlying calculations and assumptions were?

6 A. Can you give me one second?

7 Q. Sure.

8 MR. HEALEY: Your Honor, I am going to  
9 withdraw that question, and I will move on to my next  
10 question.

11 Q. (By Mr. Healey) Can you look at Schedule  
12 10, please. And Schedule 10 I am going to ask you a  
13 similar question. Line 4 shows a reduction of  
14 62,160,000. Is it fair to say you can't remember how  
15 you calculated that number either?

16 A. Which number? Sorry.

17 Q. The line 4 of the \$62,160,000 reduction.

18 A. Yes. Sitting here I think I need to give  
19 more thought to it. I can't remember.

20 Q. Let's turn back to page 2 of your  
21 testimony, please. Again, we are still in your  
22 December testimony just so it's clear for the record.  
23 And on this page this is where you start to describe  
24 in the bullet points on line 14 the various scenarios  
25 that you and Mr. Malinak are sponsoring, correct?

1 A. Yes, that's correct.

2 Q. And for purposes of -- well, actually  
3 let's turn to page 3. There is one more attached and  
4 that pertains to the SEET threshold, correct?

5 A. Among other -- other things, yes.

6 Q. Right. And my question is bullet point F  
7 on page 3, that doesn't impact the calculation of the  
8 return on equity, correct?

9 A. That on page 3 does -- that's a new  
10 threshold for the retrospective SEET test.

11 Q. I just want to clarify, picking a  
12 different threshold, that has no impact on the  
13 calculation of the return on equity, correct?

14 A. Yes, I believe so.

15 Q. Can you explain to me what a SEET  
16 threshold is?

17 A. I think the definition of SEET is  
18 significantly excessive earnings test, and I think  
19 the name is self-explanatory.

20 Q. You think -- you think the term SEET  
21 threshold is self-explanatory so that a member of the  
22 everyday public would know what that means?

23 A. Sorry. I misinterpreted your question.  
24 SEET threshold to me is -- is a threshold that kind  
25 of defines whether a company or a utility would be

1 significantly excessively earning versus either  
2 comparable or other companies.

3 Q. I would like to go back to page 2 of your  
4 testimony and bullet point B on line 16. And at the  
5 end of B you have a parenthetical that says "DP&L  
6 witness Malinak sponsors this adjustment." Do you  
7 see that?

8 A. Yes, I can read that.

9 Q. And you don't say that with any of the  
10 other bullet points, so does that mean you are  
11 sponsoring all the other ones?

12 A. Yes, that's correct.

13 Q. Let's turn to page 6 of your testimony,  
14 please. And on line 2 there is a heading that says  
15 "DP&L's DMR is Properly Excluded from the SEET." Do  
16 you see that?

17 A. Yes, I do see that.

18 Q. That's your opinion?

19 A. Yes, that's my opinion.

20 Q. Not a legal opinion though, right?

21 A. I think as we discussed up front, I am  
22 not a lawyer, so I am not providing legal opinions  
23 here, but as you can read in my testimony, that's my  
24 opinion.

25 Q. Right. But you would understand that it



1 would be up to the Commission and potentially legal  
2 experts to make a legal ruling on whether the DMR  
3 should be excluded in the SEET, correct?

4 A. Yes, I believe so.

5 Q. And, in fact, in some -- in some of your  
6 scenarios you include this -- the DMR, correct?

7 A. We included several scenarios as part of  
8 my application, and some of them we did include the  
9 DMR, yes.

10 Q. Did -- did DP&L include any of your five  
11 scenarios as terms of the Stipulation in this case?

12 A. I am not quite sure I follow your  
13 question.

14 Q. You included five scenarios, right, we  
15 talked about with you and Mr. Malinak at length, five  
16 for 2018 and five for 2019?

17 A. Yes, that's right.

18 Q. And you said today that you are  
19 recommending to the Commission adopt Scenario 1 for  
20 2018 and Scenario 6 for 2019, correct?

21 A. That's also correct.

22 Q. And did -- did the Stipulation recommend  
23 the adoption of Scenario 1 or Scenario 6 as part of  
24 the agreement with the signatory parties?

25 A. I believe in the stipulation the parties

1 basically agreed that DP&L passes the 2018 and 2019  
2 retrospective SEET test.

3 Q. Did the signatory parties agree to a  
4 specific SEET threshold in the Stipulation?

5 A. No, I don't think so.

6 Q. Did the stipulating parties agree to a  
7 specific return on equity in the Stipulation?

8 A. I don't think they agreed specifically to  
9 an ROE or to a SEET threshold, but they did agree  
10 DP&L passed the 2018 and 2019 retrospective SEET  
11 test.

12 Q. Did the signatory parties agree as part  
13 of the Stipulation on whether the DMR should or  
14 should not be included in the SEET for 2018 and 2019?

15 A. I believe the Stipulation is silent to  
16 that point, but again, the parties, they do agree  
17 DP&L passed the retrospective 2018-2019 SEET.

18 Q. You are aware that the Stipulation was  
19 agreed upon and filed in October of 2020, correct?

20 A. Yes, I believe that is the case.

21 Q. And the Ohio Edison ruling that was kind  
22 of the impetus for your December testimony came out  
23 December 1 of 2020, correct?

24 A. I don't know the date exactly, but you  
25 are probably right.

1           Q.    Sure.  The point is the Ohio Edison  
2  ruling from the Supreme Court was after the  
3  settlement, correct?

4           A.    I -- I believe it was.

5           Q.    Do you know whether DP&L had any further  
6  settlement discussions with the signatory parties  
7  after the Ohio Edison ruling to see if it had any  
8  impact on their signature on the settlement or their  
9  understanding of the settlement?

10           MR. SHARKEY:  I am going to object.  
11  Settlement communications are always confidential.  I  
12  don't think that's an appropriate question.

13           MR. HEALEY:  Your Honor, I am not asking  
14  him to divulge anything said.  I am asking him to  
15  tell me whether any conversations occurred, and the  
16  existence of settlement communications certainly is  
17  not confidential and goes directly to the first  
18  prong, among other things.

19           EXAMINER SCHABO:  Karen, could you reread  
20  the question, please.

21                   (Record read.)

22           EXAMINER SCHABO:  Mr. Healey, why don't  
23  you rephrase the question to just the beginning of  
24  that question, if you understand.  You asked several  
25  questions in that question.

1 MR. HEALEY: Sure. I will simplify.

2 Q. (By Mr. Healey) Mr. Garavaglia, do you  
3 know whether DP&L had any settlement communications  
4 with any of the signatory parties after December 1,  
5 2020?

6 A. I do not know the answer to this  
7 question.

8 Q. Let's look at page 21 of your testimony,  
9 please. And on line 20, you state that "The  
10 Commission should not use a 12% threshold." Do you  
11 see that?

12 A. Yes. I do explain the reason for that  
13 right after.

14 Q. Sure. We will get to that now. On the  
15 next page you give two reasons from lines 1 to 8,  
16 correct?

17 A. Yes, that's correct.

18 Q. And your second reason is because DP&L  
19 withdrew from ESP III, correct?

20 A. My second reason is because DP&L -- the  
21 case is still open and DP&L is currently operating  
22 under the ESP I which does not contain a SEET  
23 threshold.

24 Q. Now, you are aware that generally  
25 speaking the PUCO approves an ESP for a certain

1 number of years, usually three years, four years,  
2 five years, something like that, right?

3 A. I don't -- I can't -- I don't think I can  
4 say I am aware of that.

5 Q. Okay. Fair enough. Let's turn to page  
6 26 of your testimony, please.

7 A. If I may just compliment my previous  
8 answer? Can I?

9 EXAMINER SCHABO: Mr. Garavaglia, no. I  
10 believe you answered the question.

11 THE WITNESS: Okay.

12 EXAMINER SCHABO: That's something your  
13 attorney can bring out on redirect.

14 THE WITNESS: That's -- it's minor. No  
15 worries.

16 Q. (By Mr. Healey) So let's move to page 26  
17 of your testimony. And I would like to start on line  
18 15 where you note that "DP&L has future committed  
19 investments totaling 939 million over the next five  
20 years." Do you see that language there?

21 A. Yes, I do see that.

22 Q. And slightly above that on line 13 you  
23 state that "An order that DP&L must provide refunds  
24 to customers would eliminate or significantly  
25 restrict DP&L's ability to access the funds needed to

1 implement its planned investments for the benefit of  
2 customers." Do you see that language as well?

3 A. Yes, I do see that.

4 Q. Are you saying that if -- if the  
5 Commission orders a refund, then that 939 million in  
6 planned investments will become zero?

7 A. No, I am not saying it becomes -- will go  
8 to zero, but it would be materially impacted for  
9 several reasons.

10 Q. On line 13 you used the word "eliminate."  
11 That suggests that it would go to zero. Why did you  
12 use the word "eliminate"?

13 A. If you continue reading, if I may, "would  
14 eliminate or significantly restrict DP&L's ability to  
15 access the funds needed to implement its planned  
16 investments for the benefits of customers." So I am  
17 talking about eliminating our ability to access the  
18 funds meaning the \$300 million AES equity commitment.  
19 And also for us to be able to make the \$939 million  
20 investment, we would need to access the debt capital  
21 market and without -- and a refund could potentially  
22 eliminate our ability to access the debt capital  
23 market.

24 Q. And you are not specifying a certain  
25 amount of refunds here. You just say "refunds."

1 Does the amount of the refund affect that analysis?

2 A. Well, high level, I believe any refund  
3 would be very detrimental for DP&L. DP&L is already  
4 the lowest -- already the lowest rates -- rates in  
5 the state. DP&L already is the only utility in the  
6 state that's not investment grade, so any kind of  
7 negative regulatory outcome for the DP&L would be  
8 very, very detrimental for DP&L's future.

9 Q. Sure. You mentioned that if refunds are  
10 required to be paid at AES, you will lose out on  
11 \$300 million from AES; is that what you said?

12 A. Well, we have already contributed \$150  
13 million in 2020 so there is another second trench of  
14 150 -- \$150 million expected to come in 2021. And if  
15 a refund is issued as part of this process, that  
16 would be something very different to the Stipulation  
17 that we signed and it will be detrimental for DP&L as  
18 I mentioned again and AES would most likely not be in  
19 a position to make the \$150 million investment.

20 Q. And so my question is does that mean any  
21 refund, if the Commission orders a \$2 million refund,  
22 does that mean AES will cancel the additional  
23 \$150 million investment?

24 A. I don't think I can speak for AES here in  
25 my position, but I do know that any negative

1 regulatory outcome as a result of this process it  
2 will at a minimum make us to have some very difficult  
3 conversations internally which could lead to AES not  
4 investing the second trench of \$150 million.

5 Q. Have you done any quantitative assessment  
6 of the maximum refund DP&L can pay while still being  
7 able to make its planned investments?

8 A. As I think I just explained, I don't  
9 think -- I don't think DP&L can support any refund.

10 Q. Okay. So if the Commission says DP&L  
11 must pay a \$100 refund, the whole thing is off?

12 A. It will be -- again, any -- any  
13 negative -- and this is very hypothetical, right?  
14 But any negative outcome as a result of this process  
15 would make us pause, would make the rating agents  
16 pause, and understand what's really going on and that  
17 could -- that could be very negative and could again  
18 limit our ability to access the required capital for  
19 us to be able to invest in our -- in our assets.

20 Q. Right. So my question is have you done  
21 any quantitative assessment to try to determine what  
22 you would do in various scenarios? You know, if the  
23 refund is 10 million, we are going to do X. If the  
24 refund is 100 million, we are going to do X. Have  
25 you done any of that analysis?



1 A. No, I have not.

2 MR. HEALEY: I would like to mark OCC's  
3 next exhibit. This one is on our Excel sheet. It's  
4 OCC 39 and this is DP&L's 10-Q filing with the SEC  
5 for the quarter ending September 2020.

6 EXAMINER SCHABO: So marked.

7 (EXHIBIT MARKED FOR IDENTIFICATION.)

8 Q. (By Mr. Healey) Mr. Garavaglia, do you  
9 have a copy of this 10-Q in front of you?

10 A. I am opening it right now, sir.

11 Q. Thank you.

12 A. One second. I have it here.

13 Q. You are --

14 EXAMINER SCHABO: Mr. Healey, give me  
15 just a second to find it, please.

16 MR. HEALEY: Sure.

17 EXAMINER SCHABO: Appreciate it. I have  
18 it.

19 MR. HEALEY: No problem.

20 Q. (By Mr. Healey) Mr. Garavaglia, you are  
21 familiar with this 10-Q filing, correct?

22 A. Yes.

23 Q. And, in fact, you signed it yourself as  
24 Vice President and CFO of DP&L, correct?

25 A. That's correct.

1 Q. And you also signed it on behalf of DPL  
2 Inc.?

3 A. Yes.

4 Q. I would like to look at page 17 of the --  
5 17 of the 10-Q. It's page 22 of the PDF if that's  
6 easier for people. And on page 17 you have a heading  
7 "Note 3 - Regulatory Matters." Do you see that?

8 A. Yes, I do see that.

9 Q. And underneath that heading you start to  
10 discuss the proceedings that we are currently  
11 involved in; is that right?

12 A. Give me one second so I can read through.  
13 Yes. I am not going to read the whole thing, but  
14 yes.

15 Q. That's fine. I just wanted to make sure  
16 we know that the 10-Q here is talking about this  
17 proceeding. Now, at the bottom of page 17, there is  
18 one bullet point and the bullet points continue onto  
19 page 18. I would like to talk about some of the ones  
20 on page 18.

21 A. Okay.

22 Q. And the last of the bullet points says  
23 "DP&L shareholder funding, in an aggregate amount of  
24 approximately 30.0 million over four years." Do you  
25 see that language there?

1           A.    Yes, I can read that here.

2           Q.    And that's referring to the settlement in  
3 this case, correct?

4           A.    I believe this is one of the many  
5 benefits that our customers will have as a result of  
6 the settlement through economic development.

7           Q.    And given that you filed this with the  
8 SEC and you personally signed it, you believe that  
9 that \$30 million number is -- is accurate, correct?

10          A.    It's the best estimate we have.

11          Q.    And in that bullet point it says "DP&L  
12 shareholder funding." Who are you referring to when  
13 you say shareholders?

14          A.    DP&L's own money that DP&L could do  
15 whatever it wants with it. So instead of doing  
16 whatever it wants, DP&L is contributing to the  
17 economic -- to the economic developments that were  
18 agreed upon in the Stipulation.

19          Q.    Right. My question is you use the word  
20 "shareholder funding." Who are -- who is the  
21 shareholder or shareholders that you are referring to  
22 specifically?

23          A.    So DPL Inc. is the owner of the DP&L and  
24 ultimately AES owns -- owns DP&L.

25          Q.    So I guess my question is if DP&L needs

1 79 million a year in RSC funding to maintain its  
2 credit ratings, among other things, how can its  
3 shareholders then also afford \$30 million in payments  
4 under the settlement?

5 A. Well, I think you are only looking at one  
6 very specific, narrow part of the Stipulation. I  
7 always look at a Stipulation as a package. So DP&L  
8 benefits from other items of the Stipulation like  
9 smart meter customers also benefit from many items  
10 like Smart Grid, like this \$10 million that we have  
11 here. Negotiation settlements are give and take. I  
12 don't think anybody gets everything they ask for.

13 But at the end of the day it is a win-win  
14 for all the parties that signed -- it was nearly a  
15 unanimous Stipulation. Everybody but the OCC signed  
16 this Stipulation so.

17 Q. A few minutes ago you told me that if the  
18 Commission orders even a negligible refund in the  
19 SEET cases, AES will have to reevaluate its entire  
20 investment plan in DP&L, but then you are telling me  
21 simultaneously AES has \$30 million that it can hand  
22 out as part of the settlement, so you have to  
23 understand I am a little confused by those two  
24 positions.

25 A. You should not be confused because the

1 \$30 million has already kind of been approved as part  
2 of this overall package Stipulation that we have  
3 signed in front of the Commission. And overall  
4 net-net, this Stipulation is beneficial to our  
5 customers. It is beneficial to the parties that  
6 signed the Stipulation including the DP&L, so we are  
7 in agreement with the overall comprehensive package  
8 that is included as part of the Stipulation. We may  
9 not like all the elements that are included in the  
10 Stipulation, but again, the Stipulation should be  
11 seen as an integrated package and that's how we see  
12 it.

13 Q. Sure. Where is that \$30 million going to  
14 come from if DP&L is in such dire financial straits  
15 that it needs an RSC and it needed a DMR and it  
16 needed other riders before that? Where is that  
17 30 million coming from?

18 A. I mean, as a result -- if the Stipulation  
19 is approved as filed, AES is going to put another  
20 \$150 million in 2021 and this will, of course,  
21 improve DP&L's financial -- financial conditions.  
22 DP&L will be investing in Smart Grid which again will  
23 benefit our customers, but we have discussed that  
24 already. As a result of this Smart Grid investment,  
25 we do expect a better return on and off on the

1 investments, and those future cash flows would also  
2 help us fund the \$30 million that we -- that we have  
3 here.

4 Q. Will DP&L's shareholders still make this  
5 \$30 million in payments if the RSC is eliminated?

6 A. Due to the very hypothetical scenario but  
7 if the RSC is eliminated, there is no Stipulation,  
8 right? And there is no \$30 million.

9 MR. HEALEY: Okay. That's all I have,  
10 your Honor.

11 EXAMINER SCHABO: Mr. Sharkey, would you  
12 like a moment with your client to discuss whether or  
13 not you have redirect?

14 MR. SHARKEY: Absolutely, your Honor,  
15 please.

16 EXAMINER SCHABO: Let's go ahead and take  
17 10 minutes. We will go off the record, and we will  
18 come back on at 11:50.

19 (Recess taken.)

20 EXAMINER SCHABO: We will go back on the  
21 record.

22 It is 11:54. We are back on the record.

23 We will continue the examination of  
24 Mr. Garavaglia until its conclusion. We will then  
25 take a break until 2:00 p.m. and we will restart with

1 Mr. Murray.

2 Mr. Sharkey, your redirect.

3 MR. SHARKEY: Thank you, your Honor.

4 - - -

5 REDIRECT EXAMINATION

6 By Mr. Sharkey:

7 Q. Mr. Garavaglia, do you recall when  
8 Mr. Healey asked some questions about whether or not  
9 DP&L chose to terminate its ESP I and revert to ESP  
10 III?

11 Let me withdraw that. I misstated. Do  
12 you recall when Mr. Healey asked you some questions  
13 about whether or not DP&L chose to terminate ESP III  
14 and revert to ESP I?

15 EXAMINER SCHABO: Mr. Garavaglia, you are  
16 muted still.

17 THE WITNESS: Can you hear me now?

18 Q. Yes.

19 A. Sorry for that. Yes.

20 Q. Was the decision by the Company to  
21 withdraw from ESP III and revert to ESP I the best  
22 decision for DP&L and its customers?

23 MR. HEALEY: Objection. That's leading,  
24 your Honor.

25 EXAMINER SCHABO: Mr. Sharkey, ask the

1 question differently.

2 MR. SHARKEY: Sure.

3 Q. (By Mr. Sharkey) Can you explain,  
4 Mr. Garavaglia, whether or not the decision to revert  
5 to ESP I from ESP III was in the best interest of  
6 DP&L and its customers?

7 A. Yes. Sure, I can. Sorry. Did you not  
8 have anything to say?

9 Yes, I can. We evaluated the overall  
10 package of the ESP I versus ESP III, and we came to  
11 the conclusion that the ESP I would be more  
12 beneficial to the DP&L and its customers as the ESP I  
13 would provide more financial stability for DP&L,  
14 remunerated DP&L for the POLR risk that DP&L has and  
15 also provide ability for the DP&L to continue  
16 providing reliable service and continue services to  
17 our customers which would be extremely hard for us to  
18 continue doing so under ESP III.

19 Q. Mr. Garavaglia, would you turn to the  
20 schedules. I want to start with Schedule 5.

21 A. Yes, I have it in front of me.

22 Q. I believe on line 4 you previously  
23 testified that you don't recall how the \$62,720,000  
24 figure was calculated?

25 A. Yeah. I apologize for that. I was a



1 little bit hung up on the label on the delta firm so  
2 I -- yeah.

3 Q. Well, over the break have you had a  
4 chance to refresh your recollection as to how that  
5 figure was calculated?

6 MR. HEALEY: Objection.

7 EXAMINER SCHABO: Basis?

8 MR. HEALEY: Yes, your Honor. The  
9 purpose of the break is just to coordinate on whether  
10 there will be redirect, not for the witness to  
11 refresh his memory on questions that I asked him and  
12 that he was unable to answer on the stand. I would  
13 consider that inappropriate for counsel and the  
14 witness to basically get a redo on the question that  
15 he just wasn't able to answer. It's not that he is  
16 clarifying an answer. It is not that it was a  
17 follow-up question. He is just being asked to answer  
18 the same question again but now more effectively from  
19 his point of view.

20 EXAMINER SCHABO: He can answer the  
21 question as to whether or not his memory was  
22 refreshed, and then I am going to allow the line of  
23 questioning. You can always recross.

24 THE WITNESS: Okay. Thank you, your  
25 Honor.

1           A.     So the line 4 on schedule 5, this is  
2 basically the amount of RSC that we had previously  
3 under ESP I, before ESP III, of \$80 million but  
4 that's the after-tax amount. So \$80 million minus  
5 income tax, that gets us to the \$62 million. Again,  
6 I got a little bit hung up with the label for delta,  
7 but the DMR revenues' already incorporated on line 2  
8 so that's again a little confusion on my end. My  
9 apologies for that but here is the answer.

10           Q.     And then Mr. Garavaglia, Schedule 10,  
11 line 4, is your answer the same as to how that figure  
12 was calculated?

13           A.     Yes. Same rationale, that's basically  
14 \$80 million coming from the RSC on an after-tax  
15 basis.

16           MR. SHARKEY: Thank you, Mr. Garavaglia.

17           Thank you, your Honor. I have no further  
18 questions for him.

19           EXAMINER SCHABO: Thank you.

20           Mr. Healey, would you like to recross?

21           MR. HEALEY: Yes.

22           - - -

23           RE-CROSS-EXAMINATION

24           By Mr. Healey:

25           Q.     Mr. Garavaglia, I understand that you

1 refreshed your memory during the break. Can you tell  
2 me what you did to refresh your memory?

3 MR. SHARKEY: I am going to object.  
4 That's privileged and work product.

5 MR. HEALEY: Yeah, that's my objection,  
6 your Honor. That clearly if it's work product, that  
7 means he was fed answers by his counsel during the  
8 break.

9 EXAMINER SCHABO: That objection is  
10 overruled. He needs to answer that question. And if  
11 it's strictly privileged, give me a strictly  
12 privileged objection, but I allowed the question, and  
13 I think everyone is entitled to know the manner in  
14 which he refreshed his memory.

15 A. I -- I remembered -- remembered,  
16 Mr. Healey, even one of the questions you asked me  
17 that I just didn't think about when I was testifying  
18 you asked me if the DMR revenues were included in  
19 line 2, and I said yes.

20 But then when I -- when I read line 4, I  
21 got hung up on the label again because the label says  
22 delta from DMR, so I was trying to do the math in my  
23 mind when -- how does the delta feed into the number  
24 here and just couldn't get there, but again, when I  
25 rethought about what -- one of your questions was I

1 remembered that the \$105 million DMR was already  
2 included in row 2, and as a result, the only thing  
3 that should be adjusted in row 4 should be the RSC  
4 amount, per se amount.

5 Q. So line 4 where it says delta from DMR or  
6 RSC, that's not an accurate label?

7 A. The amount that is included in here is  
8 basically the RSC after-tax but that's what -- what  
9 that suggests is that what's taken into consideration  
10 for the overall schedule is that the ultimate, the  
11 last number for net income taking into account the  
12 DMR versus -- versus the RSC.

13 Q. And I'm still not sure you answered my  
14 question. What steps did you take during the break  
15 to refresh your memory? Did you look at documents?  
16 Did you look at your testimony? What did you do to  
17 refresh your memory?

18 A. I looked again at the schedule and I  
19 continued thinking through the questions you asked me  
20 and quite honestly you helped me getting there.

21 MR. HEALEY: Okay. Nothing further, your  
22 Honor.

23 EXAMINER SCHABO: Mr. Sharkey, I assume  
24 you have no redirect on that.

25 MR. SHARKEY: You are correct, your

1 Honor.

2 EXAMINER SCHABO: All right. Thank you  
3 very much, Mr. Garavaglia. You are excused unless  
4 and until we need a confidential session.

5 THE WITNESS: Thank you.

6 EXAMINER SCHABO: As we discussed prior  
7 to going back on the record, we will now take a break  
8 until 2:00 p.m. Thank you, everyone.

9 MR. HEALEY: Do we want to do exhibits?

10 EXAMINER SCHABO: Oh, my gosh, yes, we  
11 do. Sorry and thank you.

12 Let's start with Mr. Sharkey.

13 MR. SHARKEY: Yes, your Honor. DP&L  
14 would move for the admission of Exhibits 6A and 6B  
15 which were respectively the confidential and public  
16 versions of Mr. Garavaglia's testimony in the  
17 SEET/MFA matter.

18 EXAMINER SCHABO: Any objections? Seeing  
19 none, that will be admitted.

20 (EXHIBITS ADMITTED INTO EVIDENCE.)

21 MR. SHARKEY: DP&L would also move for  
22 the admission of Exhibit 7 which was Mr. Garavaglia's  
23 testimony in the two retrospective SEET matters.

24 EXAMINER SCHABO: Any objections?

25 Seeing none, it will be admitted.

1 (EXHIBIT ADMITTED INTO EVIDENCE.)

2 EXAMINER SCHABO: Mr. Healey.

3 MR. SHARKEY: Your Honor, we still have  
4 Exhibit 3 to address from the company. We had put  
5 that off to the end of Mr. Garavaglia's testimony.

6 EXAMINER SCHABO: That's what happens  
7 when I put my exhibit list in a different place.  
8 Yes, please. Proceed with Exhibit 3.

9 MR. SHARKEY: Yes. DP&L would move for  
10 the admission of that exhibit.

11 EXAMINER SCHABO: Any objections?

12 MR. HEALEY: Yes, your Honor. I object  
13 to the admission of Schedules 5 and 10 on the grounds  
14 that upon cross-examination, the witness was unable  
15 to explain the basis for these schedules including  
16 how the critical number on line 4 was calculated and  
17 that he was only able to do so apparently upon  
18 privileged conversations with his counsel off the  
19 record. And for that reason I don't think they  
20 should be admitted.

21 EXAMINER SCHABO: Mr. Sharkey.

22 MR. SHARKEY: Mr. Garavaglia testified  
23 that upon further thinking, he remembered the answer  
24 to that question and how that particular number was  
25 calculated. It was a minor mental error that he made

1 while he initially testified he didn't remember as he  
2 was trying to do it. I don't think that's a grounds  
3 to exclude his entire schedules.

4 EXAMINER SCHABO: I will admit the  
5 exhibit over your objection, Mr. Healey.

6 (EXHIBIT ADMITTED INTO EVIDENCE.)

7 EXAMINER SCHABO: Now, Mr. Healey.

8 MR. BEELER: One second. One second,  
9 your Honor. Just from Staff here, just a  
10 clarification on DP&L's designations. Mr. Sharkey  
11 said 6A and 6B. Are we doing it like that, or are we  
12 doing 6 and 6A?

13 EXAMINER SCHABO: 6A and 6B.

14 MR. BEELER: Okay. So the other  
15 confidential is like that too?

16 EXAMINER SCHABO: It was.

17 MR. BEELER: Okay.

18 EXAMINER SCHABO: Mr. Malinak's  
19 confidential testimonies were labeled DP&L A -- 1A  
20 was his confidential and DP&L 1B was Mr. Malinak's  
21 public version.

22 MR. BEELER: Okay. I had that wrong so  
23 thank you.

24 EXAMINER SCHABO: Now, Mr. Healey.

25 MR. HEALEY: All right. I will allow you

1 to take a break now.

2 EXAMINER SCHABO: Did you want to  
3 introduce your exhibit?

4 MR. HEALEY: Oh, I should do that.

5 EXAMINER SCHABO: Fair is fair.

6 MR. HEALEY: Yeah. We move for the  
7 admission of OCC 39.

8 EXAMINER SCHABO: Any objections?

9 MR. SHARKEY: Not from DP&L.

10 EXAMINER SCHABO: Hearing none,  
11 Exhibit 39 will be admitted.

12 (EXHIBIT ADMITTED INTO EVIDENCE.)

13 EXAMINER SCHABO: And now we can take our  
14 break until 2:00 p.m. Thanks, everyone.

15 (Thereupon, at 12:05 p.m.. a lunch recess  
16 was taken.)

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Tuesday Afternoon Session,  
January 12, 2021.

- - -

EXAMINER WILLIAMS: Let's go back on the record, please.

Okay. It's the afternoon of January 12. It's 2:03 p.m., and we are resuming the hearing in 18-1875, et al.

With that we will invite our next witness. Ms. Fleisher, would you call your witness, please.

MS. FLEISHER: Thank you, your Honor. I would like to call Mr. Michael Murray.

MR. SCHMIDT: Mr. Murray, you've been promoted. Please enable your audio and video.

MR. MURRAY: Good afternoon.

EXAMINER WILLIAMS: Good afternoon, Mr. Murray. I am seeing which tile came to life. I think I got you there. I am going to begin by swearing you in. Would you raise your right hand, please.

EXAMINER SCHABO: I'm sorry. Can we take a pause?

(Discussion off the record.)

(Witness sworn.)

1 EXAMINER WILLIAMS: Thank you.

2 Ms. Fleisher, please proceed.

3 MS. FLEISHER: Thank you, your Honor.

4 - - -

5 MICHAEL MURRAY

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

8 DIRECT EXAMINATION

9 By Ms. Fleisher:

10 Q. Mr. Murray, can you please state and  
11 spell your name for the record.

12 A. Michael Murray, M-I-C-H-A-E-L  
13 M-U-R-R-A-Y.

14 Q. Okay. And what's your place of  
15 employment and business address?

16 A. I work for Mission:data Coalition. The  
17 business address is 1752 Northwest Market Street,  
18 #1513, Seattle, Washington 98107.

19 Q. Do you have with you today a copy of the  
20 "Direct Testimony of Michael Murray on Behalf of  
21 Mission:data Coalition" that was filed in this  
22 proceeding on November 30, 2020?

23 A. Yes, I do.

24 MS. FLEISHER: I would like to mark that  
25 as Mission:data Exhibit 1.

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EXAMINER WILLIAMS: So marked.

(EXHIBIT MARKED FOR IDENTIFICATION.)

Q. (By Ms. Fleisher) Did you prepare that testimony?

A. Yes, I did.

Q. And if I asked you those same questions today, would you provide the same answers?

A. Yes, I would.

Q. Do you have any corrections to that testimony?

A. No, I do not.

MS. FLEISHER: And I would move for admission of Mission:data Exhibit 1 and offer Mr. Murray up for cross-examination.

EXAMINER WILLIAMS: Thank you, Ms. Fleisher.

Who is intending to do cross-examination I assume on behalf of OCC?

MS. WILSON: Ambrosia Wilson on behalf of OCC.

EXAMINER WILLIAMS: Good afternoon, Ms. Wilson. Please proceed.

MS. WILSON: Thank you.

- - -

## CROSS-EXAMINATION

1  
2 By Ms. Wilson:

3 Q. Mr. Murray, you are not an economist; is  
4 that correct?

5 A. I'm sorry. You broke up. Could you say  
6 that again?

7 Q. I said you are not an economist; is that  
8 correct?

9 A. That is correct.

10 Q. And you are not an attorney?

11 A. That is correct.

12 Q. Or an accountant?

13 A. That is correct.

14 Q. Your expertise is in data; is that  
15 correct?

16 A. That's right.

17 Q. And the purpose of your testimony today  
18 is to support the settlement in this case; is that  
19 correct?

20 A. That's right.

21 Q. But your testimony is focused on Smart  
22 Grid data portability.

23 A. That's correct. My testimony addresses  
24 the -- those provisions of the Stipulation.

25 Q. And you didn't provide testimony on any

1 other part of the settlement; would you agree with  
2 that?

3 A. That is correct, yes.

4 Q. Mr. Murray, are you familiar with the  
5 PUCO's three-prong evaluation of settlements?

6 A. Yes.

7 Q. Can you tell me what they are?

8 A. I believe it's one is to serve -- whether  
9 the agreement serves the public interest; one is  
10 whether there was serious bargaining among the  
11 parties; and if I am not mistaken, the third one is  
12 that it doesn't violate any existing order or rule.

13 Q. In preparing for your testimony today,  
14 did you review -- what did you review?

15 A. I reviewed the Ohio Administrative Code.  
16 I reviewed several aspects of state law. I reviewed  
17 other dockets in Ohio including the -- the  
18 PowerForward and related working groups on various  
19 topics and, of course, the -- the filings and the  
20 testimony to date by Dayton Power and Light in this  
21 case.

22 Q. Okay. So although you are aware of and  
23 familiar with the three-prong evaluation for  
24 settlements, you chose to not discuss the prongs in  
25 your testimony; is that correct?

1           A.    No.  I -- I don't think that's true.  I  
2   certainly addressed how the Stipulation comports with  
3   existing Commission policy, and I addressed how it  
4   benefits the public interest by giving customers  
5   greater access and control over their information  
6   and, therefore, over their energy usage.

7           Q.    Do you have your testimony in front of  
8   you?

9           A.    I do.

10          Q.    And could -- I am going to read to you  
11   your response to the question on page 3 "Why do you  
12   support the Stipulation in this case," and you  
13   answered "I support the Stipulation's provisions  
14   concerning data portability."  Did I read that  
15   accurately?

16          A.    Yes, and I go on to describe some of the  
17   reasons why that's the case.

18          Q.    Will you please turn to page 14 of the  
19   testimony.

20          A.    Okay.

21          Q.    And in your testimony you describe  
22   alleged Smart Grid benefits to consumers; is that  
23   correct?

24          A.    Yes.  I am not aware of the specific  
25   reference on page 14, but I do discuss that.

1 Q. It starts on line 1.

2 A. Yes.

3 Q. And in that same area on the next page or  
4 so you also describe what you consider to be the two  
5 important mechanisms for PUCO oversight.

6 A. That's right.

7 Q. And the first one being the terms and  
8 conditions under which third parties to access the  
9 data.

10 A. Correct.

11 Q. But isn't it true that the PUCO only has  
12 jurisdiction over the utilities and not third-party  
13 access to the data?

14 MS. FLEISHER: Objection, your Honor. It  
15 is asking for a legal conclusion, I think, about the  
16 Commission's jurisdiction.

17 EXAMINER WILLIAMS: To the extent the  
18 witness understands the question and has any insight,  
19 we will let him answer.

20 A. I am not a lawyer, but my understanding  
21 is that the Commission does not have jurisdiction, at  
22 least that I am aware of, over non-CRES third  
23 parties.

24 Q. And so if the PUCO doesn't have that  
25 jurisdiction, they also could not punish third

1 parties for violating the terms and conditions; would  
2 you agree with that?

3 A. Not entirely. One of the reasons why the  
4 terms and conditions are important is because the  
5 utility can take certain actions such as rescinding  
6 access if that third party is in violation of those  
7 terms with the utility. So while it may be true that  
8 administratively the Commission is unable to, for  
9 example, fine a third party --

10 EXAMINER WILLIAMS: I'm sorry. So sorry.  
11 Mr. Murray, you broken up on me. I missed the tail  
12 end of your response there.

13 THE WITNESS: My apologies. What I said  
14 was while it may be true administratively that the  
15 Commission cannot fine a third party for, say,  
16 violation of customer privacy or the like, it's not  
17 true that the Commission has no capabilities  
18 whatsoever because those terms and conditions have  
19 some enforcement power and -- and the utility under  
20 the Commission's direction could cut off a third  
21 party's access to customer data.

22 EXAMINER WILLIAMS: Thank you.

23 Q. (By Ms. Wilson) Right, but that would be,  
24 as you said, through the tariff. DP&L could remove  
25 the third parties for violating terms and conditions,



1 and the PUCO could direct DP&L to do so, but isn't it  
2 true that the PUCO does not have direct oversight of  
3 the third parties?

4 A. Again, I am not a lawyer but that is my  
5 understanding, yes.

6 Q. Because the point of this section was  
7 that PUCO's oversight. You also state in the same  
8 area PUCO must restrain DP&L from unfairly using its  
9 monopoly power against third parties; is that  
10 correct?

11 A. Yes.

12 MS. FLEISHER: Sorry. Can we have a line  
13 number on that?

14 MS. WILSON: Yeah.

15 MS. FLEISHER: Never mind. I have got it  
16 for myself.

17 MS. WILSON: 7 and 8, line 7 and 8.

18 Q. (By Ms. Wilson) So your testimony is the  
19 PUCO must restrain DP&L from using its monopoly power  
20 against third parties. If that was your testimony,  
21 then isn't it true the terms and conditions protect  
22 third parties and not necessarily customers of DP&L?

23 A. No, that's not true. And that's why it's  
24 a good idea and worthy of Commission consideration to  
25 determine the nature of those terms and conditions.

1 So the terms and conditions could involve things like  
2 certain customer protections. They could involve  
3 restraint of the utilities so as not to impose  
4 onerous or burdensome conditions upon third parties.  
5 There could be conditions having to do with limits of  
6 liability so I wouldn't read into my testimony that  
7 the sole function of the terms and conditions is to  
8 protect the interests of third parties.

9 Q. Everything you just listed, those are  
10 hypothetical in nature, correct?

11 A. They are hypothetical in Ohio because  
12 this hasn't been done, but it's not hypothetical in  
13 my experience in other states.

14 Q. And have you reviewed the Stipulation  
15 that's on file you are testifying about?

16 A. Yes.

17 Q. And the terms and conditions in that  
18 Stipulation were the protections you're discussing --  
19 specifically discusses the third parties -- parties  
20 accessing the data; is that correct?

21 A. That's correct.

22 Q. And the other mechanism that you  
23 described is that the PUCO will require stakeholder  
24 comments 180 days prior to advanced meter rollout  
25 with distributed intelligence capability. This is

1 page 15, lines 13 and 17.

2 A. Yes.

3 Q. My question is the customer benefits you  
4 describe are only applicable if DP&L selects advanced  
5 meters with DI capabilities; is that correct?

6 A. That's correct.

7 Q. And you also stated that few utilities  
8 nationwide have adopted these advanced meters.

9 A. That's right. There are a few utilities  
10 that I am aware of, most large utilities, that are  
11 pursuing advanced metering in my experience are  
12 seeking to purchase meters with distributed  
13 intelligence capabilities, so I would expect it to  
14 become much more than the norm as advanced meters get  
15 deployed across the U.S.

16 Q. But if DP&L chooses another meter type,  
17 one without DI capabilities, the benefits you listed  
18 in regards to the advanced meters AI, this would not  
19 apply; is that correct?

20 A. The benefits that are -- that stem only  
21 from distributed intelligence capabilities, correct,  
22 would not apply. Other customer benefits stemming  
23 from Green Button Connect and the Home Area Network  
24 would still apply.

25 Q. Right. But in your testimony you only

1 discuss the customer benefits in regards to a meter  
2 with DI capabilities.

3 A. No, that's not true. When I cited a  
4 study that I coauthored on page 9 of my testimony at  
5 line 4 through 7, those were customer energy savings  
6 and bill savings that resulted from access to  
7 information via either the Home Area Network or Green  
8 Button Connect and so those are not associated with  
9 distributed intelligence capabilities.

10 Q. Okay. But isn't it true on page 14, line  
11 20, you are discussing how the Stipulation enables  
12 Commission oversight of ratepayer benefits; is that  
13 correct?

14 A. Correct.

15 Q. And the next line, "How does the  
16 Stipulation enable Commission oversight of ratepayer  
17 benefits?"

18 A. Yes.

19 Q. Yes. And your answer to that is on the  
20 next page, lines 13 through 16, "if DP&L plans to use  
21 a new type of advanced meter with 'distributed  
22 intelligence' capabilities, further described below,  
23 Section 5(c)(ii) requires DP&L to file a description  
24 of its plan and allow for stakeholder comment 180  
25 days prior to implementation."

1           And the next question is "What is  
2 'distributed intelligence' and what does it mean for  
3 customer benefits?" And you go on to discuss what DI  
4 is for the next couple of pages. And these are  
5 all -- your response is only applicable to meters  
6 with DI capabilities; is that correct?

7           A. That's correct. The benefits on page 15,  
8 line 19, through page 16, line 11, is only applicable  
9 to DI capabilities.

10          Q. Okay. So you didn't in this testimony  
11 necessarily describe the customer benefits for the  
12 other types of smart meters.

13          A. I did. On -- let's see, on page 9, lines  
14 4 through 7, I mentioned a study showing significant  
15 customer energy savings and bill savings from merely  
16 having access to their own information and so that's  
17 entirely independent from the DI capabilities and  
18 that -- those benefits could very well be realized  
19 with the existing Stipulation's provisions regarding  
20 Green Button Connect and the Home Area Network.

21          Q. Right. But you didn't discuss those in  
22 the section where you discuss Commission oversight of  
23 benefits; is that correct?

24          A. If those benefits are not mentioned in  
25 that section, correct.

1 Q. Now, if you would please turn to page 8,  
2 line 17, of your testimony.

3 A. Okay.

4 Q. In here this is where you discuss what  
5 cost savings should be expected. You discuss in this  
6 section what you consider to be the various benefits  
7 of the settlement; is that correct?

8 A. That's correct.

9 Q. But you did not do any assessment of the  
10 costs of the data portability provisions of the  
11 settlement; is that correct?

12 A. That's correct. Although I will say that  
13 the costs of -- of the things like advanced meters  
14 and related IT systems having to do with that did not  
15 significantly change, or rather did not significantly  
16 grow as a result of these settlement provisions. In  
17 other words, what DP&L initially testified --  
18 presented as their cost estimates for AMI, there is  
19 no appreciable cost increase as a result of these  
20 provisions.

21 Q. But you didn't perform your own  
22 cost/benefit analysis; is that correct?

23 A. That's correct.

24 Q. And you didn't assess whether your plain  
25 benefits of portability are greater than the cost; is

1 that correct?

2 A. Well, as I said, I think we have reason  
3 to believe those costs are zero because it's already  
4 included in the company's estimates.

5 Q. But you didn't personally make that  
6 determination of your own analysis or studies.

7 A. That's correct.

8 Q. In fact, didn't you state that it's  
9 difficult to predict energy savings?

10 A. It can be difficult to predict energy  
11 savings, yeah, depends on a lot of different factors.

12 MS. WILSON: Thank you. I have no  
13 further questions for this witness.

14 EXAMINER WILLIAMS: Thank you,  
15 Ms. Wilson.

16 Ms. Fleisher.

17 MS. FLEISHER: I don't think it will take  
18 more than a minute or two but if I could just have a  
19 minute to confer with my client about redirect.

20 EXAMINER WILLIAMS: Yeah. Why don't we  
21 come back in 5 minutes. We will come back at 2:30.

22 (Recess taken.)

23 EXAMINER WILLIAMS: Karen, let's go back  
24 on the record.

25 It's 2:30. We just took a short break.

1 Ms. Fleisher, do you want to proceed with  
2 redirect?

3 MS. FLEISHER: Certainly. No redirect  
4 from Mission:data so I will just renew our motion for  
5 the admission of Mr. Murray's testimony.

6 EXAMINER WILLIAMS: Thank you.

7 Ms. Wilson, position on the admission?

8 MS. WILSON: I have no objection to that.

9 EXAMINER WILLIAMS: Okay. The testimony  
10 will be admitted without objection.

11 (EXHIBIT ADMITTED INTO EVIDENCE.)

12 EXAMINER WILLIAMS: Mr. Murray, thank you  
13 for your time and testimony today. You're excused.

14 THE WITNESS: Thank you.

15 EXAMINER WILLIAMS: And I believe,  
16 Mr. Beeler, you are calling the next witness.

17 You're on mute.

18 MR. BEELER: Staff would call Joe Buckley  
19 to the stand.

20 EXAMINER WILLIAMS: Thank you.

21 MR. SCHMIDT: Mr. Buckley, you've been  
22 promoted. If you could unmute your audio and enable  
23 your video.

24 MR. BUCKLEY: I have.

25 EXAMINER WILLIAMS: Good afternoon,



1 Mr. Buckley.

2 MR. BUCKLEY: Good afternoon.

3 EXAMINER WILLIAMS: I am going to swear  
4 you in, please. Would you raise your right hand.

5 (Witness sworn.)

6 EXAMINER WILLIAMS: Thank you.

7 Mr. Beeler, please proceed.

8 MR. BEELEER: Thank you, your Honor.

9 - - -

10 JOSEPH P. BUCKLEY

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

13 DIRECT EXAMINATION

14 By Mr. Beeler:

15 Q. Please state your name for the record.

16 A. Joseph P. Buckley.

17 Q. Who do you work for and what is your  
18 position?

19 A. I work for the Public Utilities  
20 Commission of Ohio. I am a Utility Specialist III.

21 MR. BEELEER: Your Honor, at this point I  
22 would like to have marked as Staff Exhibit 1 the  
23 testimony in support of the Stipulation of Joseph P.  
24 Buckley dated January 4, 2021, and filed in this  
25 proceeding.

1 EXAMINER WILLIAMS: So marked.

2 (EXHIBIT MARKED FOR IDENTIFICATION.)

3 Q. (By Mr. Beeler) Mr. Buckley, you have in  
4 front of you what has previously been marked as Staff  
5 Exhibit 1?

6 A. Yes. My prefiled testimony?

7 Q. Yes. Do you have any changes or  
8 corrections to that testimony?

9 A. I do. On page 3, I believe -- oh, I'm  
10 sorry. It's not on page 3.

11 Q. Sure. I believe we discussed page 6,  
12 question 11.

13 A. Yes. I believe the "(E)" should be  
14 changed to a letter "(F)."

15 Q. So that's in Section 4928.143(E), you  
16 just want to change "(E)" to "(F)"; is that correct?

17 A. Correct.

18 Q. Okay. Is that all the changes that you  
19 have?

20 A. At this time, yes.

21 Q. Okay. And your testimony, are the  
22 answers true and accurate to the best of your  
23 knowledge?

24 A. They are.

25 Q. And with the one correction, if I were to

1 ask you these questions today, would your answers be  
2 the same?

3 A. They would.

4 MR. BEELER: Your Honor, at this point I  
5 would move for admission of Staff Exhibit 1, subject  
6 to cross.

7 EXAMINER WILLIAMS: Thank you,  
8 Mr. Beeler.

9 On behalf of OCC.

10 MR. HEALEY: Your Honor, before I go can  
11 we get confirmation from the signatory parties that  
12 they do not have cross for the witness?

13 EXAMINER WILLIAMS: I will invite anyone  
14 to wave frantically or hit their unmute button. I am  
15 not seeing any activity on any cameras.

16 So with that, Mr. Healey.

17 MR. HEALEY: Thank you, your Honor.

18 - - -

19 CROSS-EXAMINATION

20 By Mr. Healey:

21 Q. Mr. Buckley, before this case you have  
22 filed testimony in, by my count, more than 20  
23 previous retrospective SEET cases; does that sound  
24 right to you?

25 A. I am not sure of the number, but I would

1 believe you if you said 20.

2 Q. Sure. And in any of those previous  
3 cases, have you ever recommended to the Commission  
4 that customers get a refund in a SEET case?

5 A. I believe I have in one.

6 Q. And do you recall what case that would  
7 be?

8 A. I don't.

9 Q. Okay. And do you recall -- sorry. Go  
10 ahead.

11 A. Not offhand but I think it was AEP and I  
12 think it was Columbus Southern or Ohio Power, one of  
13 the two.

14 Q. Okay. Have you ever recommended a refund  
15 for customers in a DP&L retrospective SEET case?

16 A. I don't believe I have.

17 Q. And that AEP case, you don't remember the  
18 case number?

19 A. I don't. I'm sorry.

20 Q. Sure. Are you testifying as an expert  
21 witness today, Mr. Buckley?

22 A. Yes.

23 Q. And are you a Smart Grid expert?

24 A. I am not.

25 Q. Are you an expert on assessing the cost

1 effectiveness of a utility's Smart Grid proposal?

2 A. I am not.

3 Q. Are you familiar with what is sometimes  
4 referred to as the more favorable in the aggregate  
5 test?

6 A. I have general knowledge of it but not in  
7 depth knowledge.

8 Q. And have you ever testified in a PUCO  
9 proceeding regarding the more favorable in the  
10 aggregate test?

11 A. I have not.

12 Q. And you are not testifying to that issue  
13 in this case, correct?

14 A. No.

15 Q. And do you understand that this combined  
16 proceeding effectively is four cases, right? There's  
17 a Smart Grid case, there's the retrospective SEET  
18 cases, and there's the quadriennial review case; is  
19 that about right?

20 A. I believe that's correct.

21 Q. And your testimony focuses only on the  
22 two retrospective SEET cases for 2018 and 2019,  
23 correct?

24 A. Yeah. I believe it would be, say,  
25 narrowly focused to that issue.

1           Q.    Now, your testimony, the cover page says  
2 it is testimony in support of the Stipulation. Do  
3 you see that on the very first page?

4           A.    I do.

5           Q.    Or maybe the second page. Are you  
6 testifying on any of the three prongs?

7           A.    It's primarily the third prong that  
8 doesn't violate any existing regulatory principles.  
9 I'm paraphrasing. I don't know if that's the exact  
10 language but.

11          Q.    Have you reviewed the Stipulation in this  
12 case?

13          A.    Yes. It's been a bit, but I've had to  
14 review a lot of things recently, so my memory of it  
15 is a little sketchy.

16          Q.    When was the last time you looked at the  
17 Stipulation, if you can recall?

18          A.    I think I glanced at it last night, but  
19 it was fairly late. So I -- again, I've -- I've  
20 reviewed it recently, but my memory of it isn't as  
21 good as it probably should be.

22          Q.    And did you rely on the Stipulation for  
23 purposes of drafting your testimony?

24          A.    It definitely was a factor.

25          Q.    And you are the only Staff witness

1     testifying in support of the Stipulation, correct?

2             A.    I believe that's -- I believe that's  
3     true, yes.

4             Q.    Do you have a copy of the Stipulation in  
5     front of you?

6             A.    I will pull it up.

7             Q.    Thank you.

8             A.    Sorry.  I am having some difficulty  
9     getting it.  I might have to go into DIS.

10            I have it now.

11            Q.    Okay.  Can you -- can you turn to  
12     Exhibit 1.

13            A.    Yes.

14            Q.    And Exhibit 1 to the Stipulation is  
15     identified as a "Capital Expenditures Summary" and  
16     that would be for the Smart Grid proposal under the  
17     settlement, correct?

18            A.    Correct.

19            Q.    And you are not testifying regarding the  
20     amount of spending on this exhibit, correct?

21            A.    I am not, no.

22            Q.    And you have no position on whether it  
23     would be prudent to spend \$249.0 million as set forth  
24     in Exhibit 1, correct?

25            A.    I do not.

1           Q.    And, for example, you see line 1 says  
2 "Smart Meters" and then it shows \$77.6 million. You  
3 have no opinion on whether that's a reasonable amount  
4 to spend on smart meters, correct?

5           A.    I do not.

6           Q.    And No. 2, "Self-Healing Grid," you have  
7 no opinion on whether \$109 million is a prudent  
8 amount to spend on a self-healing grid, correct?

9           A.    I do not.

10          Q.    Could you turn to page -- sorry,  
11 Exhibit 2 now to the Stipulation, please.

12          A.    Yes.

13          Q.    And Exhibit 2 is identified as the  
14 "Distribution Modernization Plan, IIR Revenue  
15 Requirement Estimate," correct?

16          A.    Correct.

17          Q.    And you have no opinion on whether any of  
18 the revenue requirements on this exhibit represent  
19 prudent and just and reasonable -- sorry. Let me  
20 start over.

21                    You have no opinion on whether the rates  
22 resulting from the distribution modernization plan in  
23 the IIR would be just and reasonable, correct?

24          A.    I have no intimate knowledge of -- of the  
25 program at all. So, yes, I would agree with you.



1           Q.    Can you turn to Exhibit 3 to the  
2 Stipulation, please.

3           A.    Yes.

4           Q.    And Exhibit 3 is identified as "Grid Mod  
5 I Metrics," correct?

6           A.    Correct.

7           Q.    And you are not testifying that any of  
8 the metrics found in Exhibit 3 are reasonable metrics  
9 for evaluating grid modernization, correct?

10          A.    I am not.

11          Q.    And last one, Exhibit 4, please.

12 Exhibit 4 is the cost benefit summary for DP&L's  
13 Smart Grid proposal. You are not testifying on the  
14 cost effectiveness of the smart grid proposal,  
15 correct?

16          A.    Correct.

17          Q.    And you didn't do anything to verify  
18 whether the numbers on Exhibit 4 are accurate or not,  
19 correct?

20          A.    I did not.

21          Q.    Are you aware that OCC filed testimony of  
22 witnesses in this case?

23          A.    I am.

24          Q.    Have you reviewed any of the testimony  
25 filed by OCC's witnesses?

1           A.    I have.

2           Q.    Which ones have you reviewed?

3           A.    I reviewed Duann's, Dr. Duann, both his  
4 prefiled testimony and his supplemental testimony. I  
5 don't recall the names of the other witnesses. I  
6 mainly focused on Duann's.

7           Q.    Okay. And prior to drafting your own  
8 testimony, did you review the December testimony of  
9 DP&L Witnesses Malinak and Garavaglia?

10          A.    I looked at them, not extensively. There  
11 was a lot going on at that time and I was trying to  
12 focus more on what I was trying to say and get  
13 accomplished, so I didn't -- I didn't focus on  
14 their's a whole lot, but I did read that over.

15          Q.    Let's turn to page 3 of your testimony  
16 now, please.

17          A.    I'm there.

18          Q.    And on line 4 -- or actually on line 6,  
19 you reference a recent Supreme Court decision In Re:  
20 Ohio Edison, correct?

21          A.    Correct.

22          Q.    Did you read that decision before  
23 preparing your testimony?

24          A.    I did. I must admit there was a lot of  
25 kind of legal jargon, and I am not sure I

1 comprehended it as well as I could if -- if I were  
2 able to discuss it in more detail, but I did read it.

3 Q. We discussed early on that in your  
4 experience filing testimony in past SEET cases you  
5 think you recommended a refund in one case, correct?

6 A. If I recall, yes.

7 Q. And you are aware that the PUCO is  
8 required to perform an annual SEET review for each of  
9 Ohio's EDUs that have an electric security plan,  
10 correct?

11 A. Correct.

12 Q. And so currently there are six EDUs in  
13 Ohio, right?

14 A. Correct.

15 Q. And at one point --

16 A. I think FirstEnergy is -- might be viewed  
17 for SEET purposes as one, but I think there is six  
18 EDUs, correct.

19 Q. Until recently at least, you understand  
20 that FirstEnergy was treated as three for purposes of  
21 the SEET, correct?

22 A. Correct.

23 Q. And you can correct me if I am wrong, but  
24 I believe early on in the SEET there was a time when  
25 AEP was two different EDUs, right? It was Columbus

1 Southern and Ohio Power?

2 A. Correct.

3 Q. So roughly speaking the SEET law has been  
4 in place about a decade, we've got about six  
5 utilities, so there have been somewhere in the order  
6 of 50 or 60 SEET cases in the last decade, about  
7 there?

8 A. I would say a little bit less than that  
9 but, yeah, in that general area.

10 Q. And you would agree that it's pretty rare  
11 for customers to get a refund in a SEET case, right?

12 A. Correct.

13 Q. And you are not aware of DP&L customers  
14 ever getting a refund, right?

15 A. No. I don't believe they have.

16 Q. Can you tell me generally what your  
17 understanding is of a SEET threshold?

18 A. I look at the SEET threshold as almost  
19 like a toggle. Either you're below it and you do not  
20 have excessive earnings, or you are above that  
21 toggle, and then the statute says that you should  
22 look at other things to determine whether it was  
23 excessive or not.

24 Q. Let me ask you this, if -- if a utility  
25 ROE is below the toggle point as you describe it, can

1 the Commission look at other factors then to say,  
2 well, we still think they had significantly excessive  
3 earnings?

4 A. I don't believe the statute allows that,  
5 no.

6 Q. So your view is that these other factors  
7 only come into play if the utility is above the SEET  
8 threshold.

9 A. It's not really my personal view. I am  
10 just following what the statute says. So again, if  
11 it is below that, then, no, I don't think we have  
12 remedy to look at whether it's excessive or not.

13 Q. Let's turn to page 7 of your testimony,  
14 please. And I'll wait. Sorry.

15 A. Go ahead.

16 Q. Starting on line 3, you begin to discuss  
17 how you chose a group of comparable companies for  
18 purposes of establishing a SEET threshold, right?

19 A. Correct.

20 Q. And the first step was you identified a  
21 comparable group of companies which you referred to  
22 as the XLU?

23 A. Yeah, the ETF XLU.

24 Q. Correct. And then what you did was you  
25 applied an adder as you've described it, correct?

1 A. Correct.

2 Q. And that adder is 1.64 times the standard  
3 deviation?

4 A. Yeah. That was based on a precedent in a  
5 previous case.

6 Q. Sure. Can you -- go ahead.

7 A. That was a precedent in a previous case  
8 that we kind of stuck on that being the adder. In  
9 early cases there was discussion on what the  
10 appropriate adder should be, and we kind of got  
11 guidance from the Commission that that was the adder  
12 that they preferred too.

13 Q. And is it your understanding that the  
14 Commission has applied this 1.64 adder in all SEET  
15 cases?

16 A. After the precedent was set in all  
17 subsequent cases, yes.

18 Q. Now, you use the phrase "standard  
19 deviation." Can you explain to me what a standard  
20 deviation is mathematically?

21 A. It is how far it deviates from a mean.

22 Q. How far what deviates from a mean?

23 A. How far the data points -- so 95 percent  
24 of the data points would be within a -- in a mean  
25 area. Outside of that would be outside the

1 distribution. I am not doing a very good job  
2 explaining this. It's kind of -- it's kind of a  
3 hump, I guess, and we are only looking at the part  
4 that's above so let's say it's a one-tailed test, I  
5 guess, and we are looking at anything that's outside  
6 the 95 percent. Anything outside the 95 percent  
7 would be an outlier.

8 I wish I had a whiteboard. I am not  
9 doing a very good job explaining this. I'm sorry.  
10 But it's a two-tailed test. So it's like a camel  
11 hump, and the 5 percent of the data points are within  
12 a normal distribution. Anything outside of that  
13 would be what we would consider excessive.

14 Q. When you say normal distribution, are you  
15 referring -- you are referring to what sometimes is  
16 called a bell curve, right?

17 A. Bell curve, I was saying camel back but  
18 thank you very much for explaining that.

19 Q. Sure. And you understand, or your  
20 testimony at least is that 95 percent of the data  
21 points within a normal distribution are below the  
22 point that's 1.64 standard deviations above the mean,  
23 correct?

24 A. Correct.

25 Q. Now, did you do anything to determine

1 whether the XLU group is, in fact, a normally  
2 distributed set of data points?

3 A. So what -- what we try -- what I tried to  
4 do was look if anything is a large outlier and I look  
5 at the data points in general to make sure they are  
6 not -- one doesn't skew the entire outcome, and I --  
7 I view those as a normal distribution.

8 Q. Did you plot the ROEs in the XLU group to  
9 determine whether it, in fact, forms a bell curve?

10 A. I did not, no.

11 Q. Okay. So you can't be sure that the  
12 95 percent confidence threshold actually applies  
13 since that only applies to normal distribution,  
14 right?

15 A. Correct. Like I said earlier, that  
16 was -- Commission directed us to use that and we've  
17 been using it for a number of years.

18 Q. Now, when you say the Commission directed  
19 you to use that, are you referring to on page 8 of  
20 the cases you cite in lines 7 and 8?

21 A. Could you say that again?

22 Q. Sure. When you say the Commission  
23 directed you to use this standard deviation approach,  
24 are you referring to the cases that you cite on page  
25 8 of your testimony, line 7?



1           A.    No.  I think it actually happened after  
2   that.  It was an AEP case, and I can't remember which  
3   one it was, but it was an AEP case that talked about  
4   what the adder should be, so it happened after that.  
5   I am not sure exactly which one it is.

6           Q.    Okay.  Can you tell me why you cited  
7   these two cases from 2011 then?

8           A.    Because those were kind of the early  
9   landmark cases.  I am not sure landmark is the  
10  correct word but those were the early cases.

11          Q.    Let's turn to Exhibit 1 to your  
12  testimony, please.

13          A.    Okay.

14          Q.    And in this exhibit you are calculating  
15  the SEET threshold for 2018; is that right?

16          A.    Correct.

17          Q.    And based on your calculations, the 2018  
18  SEET threshold would be 15.73 percent?

19          A.    Correct.

20          Q.    And so based on our discussion earlier  
21  about what a SEET threshold is, a utility would be  
22  deemed to have significantly excessive earnings if  
23  its earnings were above 15.73 percent, correct?

24          A.    Correct.

25          Q.    And so if we look at your comparable

1 companies on the XLU list, can you tell me which of  
2 those would have significantly excessive earnings  
3 under that definition?

4 A. In 18 -- bear with me for just a second.  
5 In 18 I think FirstEnergy would be the only one. Oh,  
6 I'm sorry, in AES.

7 Q. And AES's ROE as adjusted on your Staff  
8 Attachment 1 is 27.25 percent, correct?

9 A. Correct.

10 Q. And AES Corp. would be DP&L's parent  
11 company, correct?

12 A. Correct.

13 Q. Let's go to page 5 of your testimony,  
14 please.

15 A. Okay.

16 Q. On line 6 of your testimony, you note  
17 that DP&L operated under ESP III from November 1,  
18 2017, through December 18, 2019, correct?

19 A. Correct.

20 Q. And prior to November 1, 2017, DP&L was  
21 operating under ESP I, correct?

22 A. Correct.

23 Q. And that's because you understand that  
24 DP&L had previously withdrawn from ESP II, correct?

25 A. Correct.

1 MR. HEALEY: Your Honor, I would like to  
2 mark my next exhibit. This one is OCC 68. This is  
3 the PUCO's order from August 26, 2016, in case  
4 12-426.

5 EXAMINER WILLIAMS: So marked.

6 (EXHIBIT MARKED FOR IDENTIFICATION.)

7 Q. (By Mr. Healey) And, Mr. Buckley, I just  
8 want to confirm, we just spoke about DP&L's  
9 withdrawal from ESP II, and I just want to confirm  
10 your understanding that withdrawal from ESP II was  
11 effective August 26, 2016, according to this order,  
12 correct?

13 A. Correct.

14 Q. Okay. So based on the timeline we have  
15 just set up, we know that ESP I was in effect for the  
16 second time from August 26, 2016, to November 1,  
17 2017, right?

18 A. Correct.

19 MR. HEALEY: I would like to mark the  
20 next OCC exhibit. This one is OCC 47. And this  
21 would be the testimony of Mr. Buckley that was filed  
22 in Case Nos. 18-873 and 17-1213. It was filed on  
23 October 9, 2018.

24 EXAMINER WILLIAMS: So marked.

25 (EXHIBIT MARKED FOR IDENTIFICATION.)

1 Q. (By Mr. Healey) Mr. Buckley, this is  
2 testimony that you filed in two previous SEET cases  
3 for DP&L, correct?

4 A. I don't have them up right now. Could  
5 you repeat?

6 Q. Oh, sure. If you could -- if you could  
7 pull it up, this would be the testimony you filed in  
8 Case 18-873 on October 9, 2018.

9 A. '18.

10 Q. Let me know when you have it.

11 A. Okay. I have it up.

12 Q. Thank you. Now, this exhibit which has  
13 now been marked OCC 47, this is testimony that you  
14 filed in DP&L's SEET Cases 18-873 and 17-1213,  
15 correct?

16 A. Correct.

17 Q. And that would be for SEET years 2016 and  
18 2017, correct?

19 A. Correct.

20 Q. And as we just established based on the  
21 timeline, DP&L was operating under ESP I for the  
22 first 10 months of 2017, correct?

23 A. Correct.

24 Q. And it was operating for the rest of the  
25 2017 under ESP III, correct?

1 A. Correct.

2 Q. And then in 2016, DP&L was operating  
3 under ESP I from August 26 through the end of the  
4 year, right?

5 A. Can you repeat the question, please?

6 Q. Sure. In 2016, DP&L was operating under  
7 ESP I from August 26, which is when ESP II was  
8 withdrawn, until the end of that year, right?

9 A. Correct.

10 Q. Okay. Now, let's turn to page 3 of your  
11 testimony that we just marked as OCC 47.

12 A. Okay.

13 Q. And on page 3 I would draw your attention  
14 to line 17.

15 A. Uh-huh.

16 Q. Or actually I guess we will start with  
17 the question on line 15 which asks "What methodology  
18 did Staff employ to determine significant excessive  
19 earnings," and then your answer is "The Staff used  
20 the stipulated threshold of 12 percent. This amount  
21 was agreed to in 16-0395-EL-SSO." Do you see that?

22 A. I do.

23 Q. So your testimony in this previous case  
24 was that 12 percent was the appropriate threshold for  
25 2016 and 2017, correct?

1 A. Correct.

2 Q. And as we just established, for most of  
3 2017 and at least part of 2016, ESP I was in effect,  
4 correct, based on the timeline?

5 A. Correct.

6 Q. And so your testimony in that case was  
7 that the 12 percent SEET threshold applied to ESP I.

8 A. There wasn't -- there wasn't a SEET  
9 threshold that was inherently in ESP I. The  
10 12 percent was what we had and what was agreed to so  
11 we -- we applied it backwards at the time but there  
12 wasn't anything specifically in ESP I that said that  
13 you need to use 12 percent. It was more of a  
14 stipulated number that we used to -- that we kind of  
15 borrowed from ESP III to apply backwards.

16 MR. HEALEY: Your Honor, I would like to  
17 mark OCC's next exhibit. This is OCC 23. This is  
18 the order from that same set of cases. It's July 31,  
19 2019 in Case Nos. 17-1213 and 18-873.

20 EXAMINER WILLIAMS: So marked.

21 (EXHIBIT MARKED FOR IDENTIFICATION.)

22 MR. BEELEER: Chris, what was the number  
23 again?

24 MR. HEALEY: It's OCC 23.

25 Q. (By Mr. Healey) And, Mr. Buckley, if you

1 can focus --

2 A. Could you repeat the case number, please?

3 Q. Sure. It's the same case, the 17-1213,  
4 and it's the order from July 31 of 2019.

5 A. Okay.

6 Q. And at the bottom of page 2, the last  
7 couple of words say "DP&L Witness," and then it  
8 continues on the next page to say "Craig Forestal  
9 stated that the adjusted return on equity for DP&L  
10 during 2016 was 9.4 percent which is well below  
11 DP&L's approved SEET threshold of 12 percent." Do  
12 you see that?

13 A. I do.

14 Q. So it appears from this order that DP&L  
15 and the Commission agreed with your testimony that  
16 12 percent was the appropriate SEET threshold in  
17 2016, correct?

18 MR. SHARKEY: I'm going to object. It's  
19 not clear whether Mr. Forestal said one or both of  
20 those items from the way that it's written.

21 EXAMINER WILLIAMS: Could you rephrase  
22 the question, Mr. Healey?

23 MR. HEALEY: Sure.

24 Q. (By Mr. Healey) I guess we will focus on  
25 the phrase "well below DP&L's approved SEET threshold

1 of 12 percent." Do you see that language on the top  
2 of page 3?

3 A. I do.

4 Q. Okay. And if it's -- it must be either  
5 Mr. Forestal's testimony or the Commission's  
6 conclusion, right? It's got to be one of those, if  
7 not both?

8 A. I believe that's true.

9 Q. So now let's come back to your testimony  
10 in the current cases that you filed in December. And  
11 we will look at page 5. And on line 12 to 13, you  
12 say "Under the ESP I, a SEET threshold was not  
13 established." That would not seem to be accurate  
14 based on the exercise we just went through where we  
15 found that the Commission and you personally, in  
16 fact, said that a 12 percent SEET threshold applied  
17 for two different years in which ESP I was in effect,  
18 right?

19 A. Not being -- not being an attorney, I  
20 don't know how the laws look at it but in ESP I,  
21 there is no threshold established. But we used the  
22 threshold of 12 percent because it was agreed to.  
23 And obviously DP&L did not trip that. So that's --  
24 that's why the 12 percent was used, because it was  
25 agreed to by all parties. But I do not believe it



1 was in ESP I. So -- because we used it doesn't mean  
2 it's -- it was in the ESP I. It was just the number  
3 that we decided to use for the threshold at the time.

4 Q. Let's -- let's move to page 6 of your  
5 testimony, please. And on line 6 you state that  
6 instead of using -- well, I guess maybe not precisely  
7 this line, here on this page you state that instead  
8 of using DP&L's actual capital structure we should  
9 use the hypothetical capital structure from the  
10 15-1830 rate case, correct?

11 A. Correct.

12 Q. And I don't mean to nitpick but on line 6  
13 you said "Staff would have adopted the same  
14 hypothetical capital structure." Are you saying you  
15 are not adopting that but you would have under some  
16 other circumstances?

17 A. I guess I am saying that we did.

18 Q. Okay. And I understand you are the Staff  
19 witness, but when you say Staff would have done this,  
20 are you talking about you or somebody else?

21 A. I am talking about myself.

22 Q. Have you recommended the use of a  
23 hypothetical capital structure in a retrospective  
24 SEET case in any of your past testimony?

25 A. As we talked about earlier and you

1 pointed out, typically companies don't earn above the  
2 threshold. And one of the first things that we  
3 typically do or I typically do when I look at a SEET  
4 case is look at the filed initial numbers, either  
5 FERC or SEC filed numbers, and do a quick  
6 calculation. If they are below that SEET threshold,  
7 then I stop. And I go to -- go on from there. And  
8 one of the reasons I do that is to try to be as  
9 transparent and also try to give the Commission --  
10 the Commissions as much flexibility to determine what  
11 is the appropriate SEET threshold or over-earning  
12 levels should be.

13 So I haven't had to get into manipulating  
14 capital structures because it hasn't been necessary.  
15 But the statute allows for you to look at different  
16 infrastructures, and I do believe that is one of the  
17 big weaknesses of the SEET test is that it only looks  
18 at one metrics to determine over-earnings. It simply  
19 looks at return on equity. And that could be short  
20 sided and not give a good view and I would hate for  
21 Ohio utilities to manage their capital structures to  
22 avoid paying a SEET penalty, but I don't think that  
23 would be a good business practice.

24 So I think in changing the capital  
25 structure in this case, that avoids a company trying

1 to manage their capital structure to avoid fees.  
2 That's one of the reasons why I did it in this case.  
3 And I don't recall what their capital structure was,  
4 but I don't think it was what a utility should -- how  
5 a utility should be capitalized.

6 Q. Pardon me if I'm misinterpreting but that  
7 sounds awfully one-sided to me. You are saying that  
8 if the utility's financials show that it's below the  
9 SEET threshold, you just say looks good and move on,  
10 but if it shows that they were above it and might  
11 have to pay refunds, then it's time to start hunting  
12 for ways to lower the ROE. For example, with this  
13 hypothetical capital structure or some other  
14 adjustment, isn't that kind of a one-sided way of  
15 looking at things?

16 A. Not really. Object to the word "hunting"  
17 being used. I think that's a little unfair. If you  
18 could rephrase the question, I would gladly answer  
19 it, but I don't believe hunting is the appropriate  
20 word to use.

21 MR. HEALEY: Your Honor, I apologize, but  
22 it sounds like the witness is trying to object, and I  
23 don't think that's appropriate.

24 EXAMINER WILLIAMS: I think he is  
25 clarifying his response, but if you want to proceed

1 with a different question or clarify that, feel free.

2 MR. HEALEY: Sure.

3 Q. (By Mr. Healey) Mr. Buckley, I apologize  
4 if it sounds -- I certainly didn't mean to, you know,  
5 impugn your integrity or anything. It just seems  
6 like this is kind of a one-sided approach, whereas,  
7 you explained when you look at the utility's book  
8 numbers and the ROE is below the threshold, that ends  
9 your analysis. But when it is above the threshold,  
10 then you start to look at potential adjustments you  
11 could make, for example, the hypothetical capital  
12 structure and those adjustments have the impact of  
13 lowering ROE.

14 A. We -- currently in Ohio we don't have the  
15 situation where we have a capital structure that  
16 would -- that would be very, very skewed in one way,  
17 that the company would look to be underrated where  
18 they are over-earning. That's why we have situations  
19 where the opposite is, in fact, the case. That's why  
20 I don't have to look on the other side. I only need  
21 to look to see if a company has got too little  
22 equity, and one of the reasons that -- that this  
23 equity problem came into -- came to pass was because  
24 of the impairments, and you are removing equity, it  
25 appears that the return on equity is much higher.

1           If you are adding a bunch of equity,  
2           which I don't think we have any utilities that have a  
3           70 percent equity position, then I would definitely  
4           look to see if that's the appropriate rate capital  
5           structure. We just don't have those.

6           Q.    So you are not testifying that the PUCO  
7           should always use whatever capital structure was  
8           approved in the utility's most recent rate case, are  
9           you?

10          A.    What I am saying is they should use an  
11          appropriate capital structure.

12          Q.    And the "appropriate" meaning what?

13          A.    When compared to their peers, then it is  
14          within a reasonable range.

15          Q.    The practical effect of using a  
16          hypothetical capital structure in this case is to  
17          lower the return on equity, correct?

18          A.    Incorrect, no. It's not correct. That  
19          is the outcome.

20          MR. HEALEY: I'm sorry.

21          A.    Excuse me. I'm not done. That is the  
22          outcome of the calculation but it's not the goal of  
23          the calculation.

24          MR. HEALEY: Could I have my question  
25          reread. I believe I said "practical effect" and not

1 "goal," so I just want to make sure I am consistent  
2 with what I said.

3 (Record read.)

4 MR. HEALEY: Thank you.

5 Q. (By Mr. Healey) I was just looking for  
6 math, so when you -- when you used this hypothetical  
7 capital structure, that increased the equity,  
8 correct?

9 A. That would be correct.

10 Q. And increasing the equity lowers the ROE  
11 since equity is in the denominator, correct?

12 A. Mathematics would tell you, yes.

13 Q. But you're not -- I think this is clear  
14 but you are not suggesting that DP&L's actual equity  
15 is -- are the numbers you have on page 6 of your  
16 testimony, the 532.9 million and the 552 million,  
17 correct?

18 A. Correct.

19 Q. And DP&L is the one that decides how much  
20 debt to hold on its books, correct?

21 A. I think DP&L -- DP&L is owned by a parent  
22 company but I think would have a lot of input into  
23 the capital structure.

24 Q. Right. The PUCO doesn't direct utilities  
25 to have a specific capital structure, does it?

1           A.    If they -- if they do, I don't believe  
2    it's a -- it's a prudent thing to do. I know at one  
3    time there was a 50/50 capital structure mentioned,  
4    but I don't recall exactly what -- what the situation  
5    was.

6           Q.    Have you -- have you in your experience  
7    ever seen the Commission say to a utility we order  
8    you to maintain a particular capital structure?

9           A.    I know it was mentioned in a -- in a  
10   Commission document that a company should have a  
11   capital structure that approaches 50/50.

12          Q.    Let's continue on page 6 of your  
13   testimony and I would like to look at the table you  
14   have at the bottom for capital structure from rate  
15   case. Do you see that?

16          A.    Yes.

17          Q.    Thank you. And you use this table which  
18   flows onto the next page to calculate your return on  
19   equity for 2018 of 16.27 percent, correct?

20          A.    Correct.

21          Q.    And that would be the net income divided  
22   by the average equity, right?

23          A.    Correct.

24          Q.    And the DMR number there, you didn't  
25   subtract the DMR from the net income, did you?

1           A.    I did not, no.

2           Q.    And likewise for 2019, you did not  
3 subtract the DMR from the net income, correct?

4           A.    I did not.

5           Q.    And so you would, therefore, disagree  
6 with DP&L's witnesses who say that it should be --  
7 should be excluded, correct?

8           A.    I think it would be the interpretation of  
9 the Supreme Court's ruling. I took a very narrow  
10 interpretation of it. I think it could be  
11 interpreted different ways. I leave that up to the  
12 lawyers to decide. I took a more narrow  
13 interpretation.

14          Q.    Right. For purposes of your testimony,  
15 you -- you included it, right?

16          A.    Correct. Or --

17          Q.    And you did -- you included it in the net  
18 income.

19          A.    Correct. I get screwed -- I get tripped  
20 up with included, excluded, but you are correct.

21          Q.    All right. Let's move to page 8 of your  
22 testimony, please. And on page 8 starting on line  
23 12, you note that if your methodology were used, it  
24 would lead to a refund of approximately 3.7 million  
25 in 2018 and 57.4 million in 2019, correct?



1           A.    Correct.

2           Q.    And you would agree that if we were to  
3 use DP&L's actual capital structure and not your  
4 hypothetical capital structure, those refunds would  
5 be higher, correct?

6           A.    Correct.

7           Q.    And ultimately you recommend zero refunds  
8 in this case; is that right?

9           A.    Correct.

10          Q.    And the basis for your testimony that  
11 customers should not get a \$61 million refund is  
12 because of the \$300 million investment from AES?

13          A.    Equity infusion, correct.

14          Q.    What if AES doesn't make the second  
15 \$150 million investment?  Would your testimony still  
16 be that customers should not get a refund?

17          A.    I believe that it would make it a much  
18 more difficult situation for us to justify that a  
19 refund is not necessary.  But I -- I think it would  
20 make -- I think it would make it more difficult.

21          Q.    And obviously we don't know for sure  
22 whether they will or won't.  We just know they have  
23 stated that they are making that commitment, right?

24          A.    They have stated it in SEC documents  
25 which is -- it is kind of harder to go back on

1 because they have basically told the investment  
2 community they plan to do this. It would take  
3 something fairly substantial for them to go back on  
4 because they would have to explain to the investors  
5 of DP&L why they did that.

6 Q. Now, your expectation is that if AES  
7 makes that second \$150 million investment, DP&L will  
8 use the 300 million to improve its infrastructure and  
9 modernize its grid, right?

10 A. That they would at least use a portion of  
11 it to spend on improvements that Ohio ratepayers  
12 would enjoy.

13 Q. And DP&L would also enjoy it as well  
14 because when they make capital investments, they  
15 ultimately get a return on and of those through the  
16 regulatory process, correct?

17 A. I think the term "prudent" is being left  
18 out of your statement; but, yes, if they are  
19 prudent -- if they are deemed to be prudent  
20 investments, then they would earn a return on that,  
21 yes.

22 Q. And they would have to be used and  
23 useful, correct?

24 A. Correct.

25 Q. And in this case DP&L is, in fact,

1 proposing a return of and on its Smart Grid  
2 investments through the IIR, correct?

3 A. Correct.

4 Q. So the -- the general theme then of your  
5 conclusions is that because AES is making this  
6 \$300 million investment, which it will get a return  
7 of and on, customers will ultimately pay for that  
8 300 million since they will pay the return of and on,  
9 and we should use that same \$300 million as the basis  
10 to deny them the \$60 million in refunds they would  
11 otherwise get? That's what you are saying?

12 A. I believe that's what the statute allows  
13 for and reverts back to a substantial capital  
14 investment. What the people that have wrote that  
15 section of the statute I think that -- I don't know.  
16 But that's what I was directed to do by the statute  
17 was look to see if there is an investment, we see an  
18 investment, and that's why we made that call. In  
19 addition, it's just not a -- something that -- a  
20 typical capital spend. It's in addition to their  
21 normal capital spend.

22 Q. You're not suggesting that the SEET  
23 statute requires the Commission to make this  
24 adjustment, right? It has the discretion to,  
25 correct?

1           A.    Correct.

2           Q.    And you are recommending that it exercise  
3 that discretion, correct?

4           A.    Correct.

5           Q.    You could have easily recommended that it  
6 decline to do so, right?

7           A.    I probably wouldn't say decline to do so.  
8 I would probably be silent on it.

9           Q.    Fair.  The point is just because the  
10 Commission can do something under a statute doesn't  
11 mean that it should do something under its statute,  
12 right?  Just generally.

13          A.    I don't want to make a general statement  
14 like that, but in this case I think that's true.  In  
15 the SEET cases I believe that's true.  In other cases  
16 I don't know.

17               MR. HEALEY:  Fair.  That's all I have,  
18 your Honor.

19               EXAMINER WILLIAMS:  Thank you,  
20 Mr. Healey.

21               Mr. Beeler?

22               MR. BEELEER:  Your Honors, can we have 10  
23 minutes to chat about redirect?

24               EXAMINER WILLIAMS:  Yeah.  Let's go ahead  
25 and make it a full 10.  We'll go back at 3:40.

1 MR. BEELER: Thank you, your Honor.

2 EXAMINER WILLIAMS: We are off the  
3 record.

4 (Recess taken.)

5 EXAMINER WILLIAMS: Karen, let's go ahead  
6 and go back on the record.

7 Mr. Beeler, any redirect?

8 MR. BEELER: No redirect, your Honor. At  
9 this point I would move for the admission of Staff  
10 Exhibit 1.

11 EXAMINER WILLIAMS: Thank you.

12 Mr. Healey?

13 MR. HEALEY: No objection, your Honor.

14 EXAMINER WILLIAMS: All right. Staff  
15 Exhibit 1 will be admitted.

16 (EXHIBIT ADMITTED INTO EVIDENCE.)

17 EXAMINER WILLIAMS: Mr. Healey, do you  
18 have any exhibits you want us to consider?

19 MR. HEALEY: Yes, your Honor. OCC moves  
20 for the admission of OCC Exhibit 47.

21 EXAMINER WILLIAMS: Does anyone have any  
22 objection to the admission of Staff Exhibit OCC  
23 Exhibit 47?

24 Given adequate time, I see no one moving  
25 to their cameras or mute buttons, so OCC Exhibit 47

1 is admitted without objection.

2 (EXHIBIT ADMITTED INTO EVIDENCE.)

3 EXAMINER WILLIAMS: Mr. Buckley, you are  
4 excused. Thank you for your testimony. And I think  
5 we can go ahead and go off the record and talk about  
6 our plans for tomorrow.

7 (Discussion off the record.)

8 EXAMINER WILLIAMS: Let's go ahead and go  
9 back on the record.

10 While we were off the record, we  
11 discussed briefly we have one more administrative  
12 item which is the consideration of the admission of  
13 the Joint Stipulation.

14 Mr. Beeler, you were going to initiate  
15 that?

16 MR. BEELER: Sure. Yes, your Honor, I  
17 would move for the admission of Joint Exhibit 1 which  
18 is the Stipulation and Recommendation filed in the  
19 consolidated cases.

20 EXAMINER WILLIAMS: Mr. Healey, do you  
21 have a position?

22 MR. HEALEY: No objection, your Honor.

23 EXAMINER WILLIAMS: Anybody else? I  
24 guess nobody else would have anything to say about  
25 that, so we will deem that admitted without objection

1 as well.

2 (EXHIBIT ADMITTED INTO EVIDENCE.)

3 EXAMINER WILLIAMS: Now we can go off the  
4 record and discuss our plans for tomorrow.

5 Thank you, Karen.

6 (Thereupon, at 3:46 p.m., the hearing was  
7 adjourned.)

8 - - -

9 CERTIFICATE

10 I do hereby certify that the foregoing is  
11 a true and correct transcript of the proceedings  
12 taken by me in this matter on Tuesday, January 12,  
13 2021, and carefully compared with my original  
14 stenographic notes.

15

16

17 Karen Sue Gibson, Registered  
18 Merit Reporter.

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19 (KSG-7023)

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**Case No(s). 18-1875-EL-GRD, 18-1876-EL-WVR, 18-1877-EL-AAM, 19-1121-EL-UNC, 20-0680-EL-UNC**

Summary: Transcript Dayton Power and Light, etc.  
Volume 2 electronically filed by Mr. Ken Spencer on behalf of Armstrong & Okey, Inc. and  
Gibson, Karen Sue Mrs.