

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

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

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

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

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

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

- - -
 VOLUME IV
 PUBLIC RECORD

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

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11 PROCEEDINGS

12 before Ms. Patricia Schabo and Mr. Michael Williams,
13 Attorney Examiners, at the Public Utilities
14 Commission of Ohio, via Webex, called at 9:21 a.m. on
15 Thursday, January 14, 2021.

16 - - -

17 VOLUME IV

18 - - -

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On behalf of the Staff of the PUCO.

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3 Testimony Opposing the Settlement and Making Consumer Recommendations of Edward W. Hill, Ph.D.	572	691

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Thursday Morning Session,
January 14, 2021.

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EXAMINER WILLIAMS: Good morning,
everyone. It is 9:21 now on Thursday, January 14.
We are reconvening in Case No. 18-1875, et al.

At this time the only witness we had
planned for today's nonconfidential evidence was
Dr. Edward Hill. Upon logging in before 9 o'clock,
Dr. Hill discovered he had some connectivity issues.
So about 9:15 plus or minus he did leave his
residence to go to his professional address where he
expects to have better internet connectivity, and we
are going to proceed with audio and video for
purposes of his testimony today.

So with that we are going to adjourn
until 10:00 a.m. At that time hopefully we will pick
up and have access to Dr. Hill.

Any questions from anybody before we go
offline here?

Seeing none, we will see everybody at 10
o'clock. Thank you.

(Recess taken.)

EXAMINER WILLIAMS: We are back on the
record. It is now 10:01 Thursday, January 14. We

1 had some technical issues getting Dr. Hill connected
2 for purposes of his testimony today. He has gone
3 into his physical professional office, and I am told
4 that he has perfect connectivity at this juncture so
5 that I would invite OCC to call their witness.

6 MR. HEALEY: Thank you, your Honor. At
7 this time OCC calls Edward Hill, Ph.D. on behalf of
8 the Consumers' Counsel.

9 EXAMINER WILLIAMS: Mr. Hill, would you
10 raise your right hand so I can swear you in.

11 (Witness sworn.)

12 EXAMINER SCHABO: Mr. Hill is muted.

13 EXAMINER WILLIAMS: You are on mute, sir.

14 MR. HILL: Second try. I do.

15 EXAMINER WILLIAMS: Thank you.

16 Mr. Healey.

17 MR. HEALEY: Yes, your Honor. At this
18 time I would like to mark as OCC Exhibit 3 the
19 testimony opposing the settlement and making consumer
20 recommendations of Edward W. Hill, Ph.D. filed in
21 these cases on December 17, 2020.

22 EXAMINER WILLIAMS: So marked.

23 (EXHIBIT MARKED FOR IDENTIFICATION.)

24 MR. HEALEY: Thank you, your Honor.

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EDWARD W. HILL, Ph.D.

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

DIRECT EXAMINATION

By Mr. Healey:

Q. Dr. Hill, you prepared testimony that was
filed in this case on December 17, 2020, correct?

A. Correct.

Q. And that testimony is what has now been
marked OCC Exhibit 3?

A. I don't have an exhibit marker in front
of me but, so I can't testify.

Q. Okay. You have a copy of the testimony
you filed -- caused to be filed in this case in
December of 2020, correct?

A. I do, yes.

Q. And I represent to you that the Attorney
Examiner just marked it as OCC 3. And the testimony
here was prepared by you; is that correct?

A. Correct.

Q. And do you have any corrections to that
testimony today?

A. I do. There are -- the errata sheet that
I provided on page 9, line 2, the word "attract"
should be "attracted."

1 I forgot. On page 7, line 21, I'm sorry,
2 about that one. I have got to do it out of order.
3 Page 7, line 21, the sentence should begin with "In
4 general comma."

5 Page 9, line 2, we changed 'extract' to
6 extracted."

7 And page 9, line 5, the word "joined"
8 should be "opposed." I got that one backwards.
9 Yeah.

10 Page 13, footnote 11, second sentence is
11 "is are," should be "which are."

12 Line 19 -- I'm sorry, page 19, line 6, we
13 should have a period after the words "5.1 million."
14 And, let's see, I have got a big deletion here.
15 Everything after that should be deleted. I was
16 wrong.

17 EXAMINER WILLIAMS: I want to make sure.
18 So on page 19, line 6, the sentence ends "5.1 million
19 period," and the rest of the sentence there is
20 excised?

21 THE WITNESS: Correct.

22 EXAMINER WILLIAMS: The footnote stays,
23 or no?

24 THE WITNESS: Footnote, yeah, no, the
25 footnote goes. That should have been setting at 21.

1 Yeah, the footnote goes.

2 EXAMINER WILLIAMS: Okay.

3 A. Page 19, line 8, we took care of that.
4 Line 25 -- page 25, line 22.

5 EXAMINER WILLIAMS: I'm sorry. You're
6 breaking up a little bit when you are shuffling
7 papers in front of the microphone.

8 MS. BOJKO: I'm sorry.

9 MS. WHITFIELD: Can I ask a quick
10 question? You said page 19, line 8. Are we striking
11 that last sentence that starts on page 7 and goes to
12 page 8 -- line --

13 THE WITNESS: Let me go to page 19. What
14 I want to do by striking after 5.1 million, we took
15 care of that other issue, so it's gone.

16 MS. WHITFIELD: But is the sentence "Some
17 signatory industry," is that there or is that gone
18 now too? The next sentence.

19 THE WITNESS: I'm seeing it here. We'll
20 strike that as well.

21 MS. WHITFIELD: Okay. Thank you.

22 A. Page 25, line 22, you need a space
23 between 2008 and FirstEnergy.

24 And line 23, there is an underscore under
25 opinion that should be -- that should not be there or

1 the word "opinion."

2 And page 26, line 7, is an extra period
3 and quotation marks after the word "reasonable."

4 Q. Thank you, Dr. Hill. And with those
5 corrections are all of the questions -- I apologize.
6 With those corrections are all of your answers as
7 provided in your testimony true and accurate to the
8 best of your knowledge?

9 A. They are.

10 MR. HEALEY: Thank you. With that, your
11 Honor, OCC moves for the admission of OCC Exhibit 3,
12 and Dr. Hill is available for cross-examination.

13 EXAMINER WILLIAMS: Thank you. In
14 accordance with our communications prior to the
15 hearing, I understand there are a number of parties
16 that are considering cross-examination. We will go
17 ahead and begin with DP&L, and then we will allow
18 other -- others to indicate whether they are
19 satisfied with their cross-examination intentions or
20 whether they want to proceed independently.

21 So who is going to cross on behalf of
22 DP&L.

23 Ms. Bojko.

24 MS. BOJKO: Your Honor, before we proceed
25 to cross-examination, would you entertain motions to

1 strike at this point?

2 EXAMINER WILLIAMS: Yes.

3 MS. BOJKO: Thank you, your Honor. I
4 have three motions to strike, all with the same
5 rationale, so I am going to give you all three page
6 citations first, and then I will state the rationale
7 so as to not repeat myself.

8 EXAMINER WILLIAMS: Okay, Ms. Bojko.

9 MS. BOJKO: The first motion to strike is
10 on page 14, line 8 through 16, question and answer
11 No. 13.

12 EXAMINER WILLIAMS: Okay.

13 MS. BOJKO: Second motion to strike is on
14 page 24, lines 5, starting with "In the cases," so
15 the end of line 5, continue to the end of paragraph
16 line 9.

17 EXAMINER WILLIAMS: Okay.

18 MS. BOJKO: And then additionally on page
19 25, beginning on line 20, through page 26, line 10.

20 EXAMINER SCHABO: Ms. Bojko.

21 MS. BOJKO: Yes.

22 EXAMINER SCHABO: I'm sorry. I missed
23 the complete line reference for your second motion to
24 strike on page 24. I caught line 5, and then I
25 don't -- I didn't catch where you ended.

1 MS. BOJKO: Through line 9, the end of
2 the paragraph.

3 EXAMINER SCHABO: Thank you.

4 EXAMINER WILLIAMS: Ms. Bojko, the
5 rationale.

6 MS. BOJKO: Yes, thank you, your Honor.
7 In all three cases, Mr. Hill is discussing his
8 observations about previous Public Utilities
9 Commission proceedings pertaining to completely
10 separate issues regarding electric security plan
11 cases and involving different utilities. These
12 previous proceedings are not in any way related to
13 the current case. It's not even the same type of
14 case, and they do not make any fact at issue more or
15 less probable which is the standard for relevance
16 under Rule 401. So we move to strike the irrelevant
17 passages regarding other utilities and/or the
18 electric security plan cases. Thank you.

19 EXAMINER WILLIAMS: Thank you.

20 Mr. Healey.

21 MR. HEALEY: Yes, your Honor. These
22 passages refer to prior PUCO cases. Mr. Hill was
23 relying on these cases to render his expert opinion.
24 They are certainly pertinent to that. He is
25 explaining why the problem he's identifying through

1 his testimony of these redistributive coalitions is
2 not an isolated problem and that his opinion about
3 the propriety of such a coalition in this case is
4 informed by his experience and his knowledge
5 regarding these other cases.

6 Under Rule of Evidence 703, Dr. Hill as
7 an expert witness is entitled to rely on essentially
8 any facts or data he deems relevant for purposes of
9 developing his expert opinion and that is what he is
10 doing in these -- in these portions of his testimony
11 that Ms. Bojko seeks to strike.

12 EXAMINER WILLIAMS: Thank you. I find
13 they do go to the formation of his professional
14 opinion. We will certainly take heed as to what
15 their probative value is pursuant to
16 cross-examination, but they will not be stricken.

17 MS. BOJKO: Thank you, your Honor.

18 EXAMINER WILLIAMS: Thank you.

19 MS. BOJKO: I have nothing further.

20 EXAMINER WILLIAMS: Thank you, Ms. Bojko.

21 Mr. Sharkey, are you doing cross on
22 behalf of DP&L?

23 MR. SHARKEY: No, your Honor. It will be
24 Mr. Hollon.

25 EXAMINER WILLIAMS: Thank you.

1 Mr. Hollon.

2 MR. HOLLON: Good morning, your Honor.

3 EXAMINER WILLIAMS: Good morning. Please
4 proceed.

5 - - -

6 CROSS-EXAMINATION

7 By Mr. Hollon:

8 Q. Good morning, Dr. Hill. We met last
9 week, but again, my name is Christopher Hollon. I am
10 an attorney with the law firm Faruki PLL, and I
11 represent The Dayton Power and Light Company. As a
12 preliminary matter, I would like to have handy your
13 testimony and the Stipulation and Recommendation that
14 was filed in this proceeding. Is that okay?

15 I think you are on mute, sir.

16 A. Thank you, I was. What was your request
17 about the testimony and the Stipulation? I missed
18 the verb.

19 Q. Just that you have your testimony and the
20 Stipulation in this case handy.

21 A. The answer is yes. I have to pull the
22 Stipulation out. Here it is. I have it.

23 Q. Okay. Thank you. Sir, you testified as
24 a witness in Commission proceedings before, correct?

25 A. I have, correct.

1 Q. And you are a witness in FirstEnergy's
2 2014 ESP case?

3 A. Correct.

4 Q. And you are also a witness in AEP's 2014
5 power purchase agreement case regarding OVEC?

6 A. Correct.

7 Q. In each case you filed testimony opposing
8 a Stipulation that had been filed with the
9 Commission, correct?

10 A. Correct.

11 Q. So you understand that in Commission
12 proceedings any two or more parties may enter into a
13 Stipulation to propose a resolution of a case?

14 A. Correct.

15 Q. And you further agree that a Stipulation
16 must be adopted by the Commission for it to go into
17 effect, correct?

18 A. Correct.

19 Q. You further understand that in deciding
20 whether to adopt a stipulation, the Commission
21 employs a three-prong test?

22 A. Correct.

23 Q. And the first prong looks at whether the
24 stipulation is a product of serious bargaining among
25 capable and knowledgeable parties?

1 A. Correct.

2 Q. And the second prong looks at whether the
3 stipulation as a package benefits ratepayers and is
4 in the public interest?

5 A. Correct.

6 Q. And the third prong looks at whether the
7 settlement package violates any regulatory practice
8 or --

9 A. Correct.

10 Q. You reviewed the Stipulation that was
11 filed in this proceeding?

12 A. I did.

13 Q. And, sir, in your testimony you address
14 what you refer to as redistributive coalitions; is
15 that correct?

16 A. I missed the verb.

17 Q. You address what you refer to as
18 redistributive coalitions?

19 A. Correct.

20 Q. And you argue in your testimony that such
21 coalitions are relative in -- I guess subject to your
22 correction this morning, in general relatively small
23 groups that use political or regulatory processes to
24 secure benefits that can't be earned in competitive
25 markets?

1 A. Correct.

2 Q. And you further maintain that each member
3 of such a coalition joined based only on their
4 self-interest?

5 A. Correct.

6 Q. And you believe that the signatory
7 parties to the Stipulation in this proceeding
8 constitute a redistributive coalition, correct?

9 A. Correct.

10 Q. In forming that coalition you argue in
11 your testimony that the signatory parties have
12 secured only limited benefits for themselves and
13 their members?

14 A. What I believe that I wrote is that the
15 redistributive -- the members of the redistributive
16 coalition secured benefits through the proceedings
17 that they could not get through any other way and
18 those benefits are to themselves or to their members
19 or to -- yes.

20 Q. Okay. Thank you. And so are you
21 familiar with the parties who were granted
22 intervention by the Commission in this proceeding?

23 A. I'm familiar with those that signed the
24 Stipulation. I don't know if others were allowed --
25 other parties were involved in the negotiations, and

1 I'm also aware that the Ohio Consumers' Counsel
2 intervened.

3 Q. Okay. And you agree that those parties
4 that joined the Stipulation and the Office of the
5 Ohio Consumers' Counsel have experience participating
6 in Commission proceedings, correct?

7 A. Correct.

8 Q. Do you contend that any parties that were
9 granted intervention by the Commission should not
10 have been allowed to intervene?

11 A. I do not.

12 Q. And do you contend that the Commission
13 denied any requests to intervene in this proceeding?

14 A. I have no knowledge.

15 Q. You agree that Commission proceedings are
16 generally open to the public?

17 A. That they are, correct.

18 Q. And that the dockets of those proceedings
19 are publicly available online.

20 A. Correct.

21 Q. Did you personally participate in the
22 negotiation of the Stipulation in this proceeding?

23 A. I did not.

24 Q. Did you review any drafts of the
25 Stipulation in this case before it was signed by any

1 party?

2 A. I did not.

3 Q. Do you know how many negotiation sessions
4 were held among the parties regarding settlement of
5 this case?

6 A. I do not.

7 Q. Do you know over what period of time the
8 negotiation sessions were held among the parties to
9 the Stipulation?

10 A. I do not.

11 Q. You understand that the Staff of the
12 Commission joined the Stipulation?

13 A. I do.

14 Q. And you understand that the Staff is not
15 required to join stipulations in Commission
16 proceedings, correct?

17 A. That's correct.

18 Q. And you didn't interview Staff about its
19 support of the Stipulation, correct?

20 A. I did not, correct.

21 Q. So you do not know what interest Staff
22 had in this Stipulation, correct?

23 A. I don't -- I am having difficulty
24 figuring how to answer that, so I will answer
25 correct.

1 Q. And you do not know when Staff signaled
2 its support for this Stipulation, correct?

3 A. Correct.

4 Q. And you do not know the sequence in which
5 parties joined the Stipulation, correct?

6 A. I know that -- correct.

7 Q. And you didn't interview any signatory
8 parties to determine what benefits they secured in
9 the Stipulation, right?

10 A. Correct. My only knowledge comes from
11 reading the Stipulation itself.

12 Q. Okay. And so when you considered those
13 benefits that you identified in your testimony that
14 the signatory parties secured, you considered only
15 expressed references to those parties in the
16 Stipulation, correct?

17 A. That is correct.

18 Q. So I believe in your deposition you
19 referred us to such terms as "revealed preferences"?

20 A. Correct.

21 Q. And in your review of the Stipulation,
22 you did not see any broad-based cost reductions for
23 anyone outside of those in the redistributive
24 coalition that you so termed, correct?

25 A. The Stipulation asserts that there are

1 benefits to consumers, but my testimony is restricted
2 to the gains that were received by the members of the
3 redistributive coalition itself.

4 Q. Okay. So you did not consider in your
5 testimony the benefits of grid modernization,
6 correct?

7 A. Correct.

8 Q. You didn't consider any benefits from
9 increased reliability that would be brought about by
10 investments committed in the Stipulation?

11 A. Correct, because it did -- does not
12 rely -- address the redistributive coalition
13 directly.

14 Q. Okay. And you did not consider the
15 benefits of data access provisions in the
16 Stipulation.

17 A. No.

18 MR. HEALEY: Objection.

19 EXAMINER WILLIAMS: Basis?

20 MR. HEALEY: He already answered, so I'll
21 move on.

22 EXAMINER WILLIAMS: Thank you.

23 Please continue.

24 Q. (By Mr. Hollon) Do you consider the --
25 strike that.

1 In reviewing the Stipulation and
2 assessing the benefits that enter into DP&L, you
3 argue that the company got basically most of what it
4 wanted in the Stipulation, correct?

5 A. Correct.

6 Q. And you understand that this proceeding
7 is -- is a consolidation of several formerly separate
8 proceedings?

9 A. That's my understanding from -- from the
10 Stipulation.

11 Q. Okay. And you understand that this
12 proceeding includes a settlement of DP&L's grid
13 modernization plan case?

14 A. The -- it is, correct.

15 Q. And this proceeding also settles DP&L's
16 case regarding the prospective significantly
17 excessive earnings test and more favorable in the
18 aggregate test case?

19 A. Correct.

20 Q. And that the Stipulation also concerns
21 the settlement of DP&L's retrospective significantly
22 excessive earnings test cases for 2018 and 2019?

23 A. Correct.

24 Q. In preparing your testimony did you read
25 DP&L's applications in those cases?

1 A. I did not.

2 Q. And in preparing your testimony, did you
3 read any testimony supporting those applications?

4 A. The only -- oh, the original application
5 you are referring to?

6 Q. Correct.

7 A. I did not.

8 Q. I understand that you reviewed the
9 testimony of Ms. Schroder in support of the
10 Stipulation?

11 A. Correct.

12 Q. Okay. So before submitting your
13 testimony, you did not analyze the difference between
14 any of DP&L's original proposals in the cases at
15 issue and the terms and conditions of the
16 Stipulation, correct?

17 A. Correct.

18 Q. And you didn't independently analyze the
19 cost/benefit analysis in the Stipulation, correct?

20 A. I read -- I read the cost/benefit
21 analysis. I didn't do a -- I didn't do a deep
22 analysis of it. It was kind of thinly documented.

23 Q. In preparing -- in preparing --

24 A. I was going to say and also it didn't
25 bear directly on the purpose of my testimony.

1 Q. In preparing your testimony did you
2 consider whether DP&L has any obligation outside of
3 this proceeding to file a new electric security plan
4 case?

5 A. I saw reference to it in the Stipulation
6 and that is the extent of my knowledge.

7 Q. So you don't have any understanding
8 outside of this proceeding that DP&L has an
9 obligation to file an electric security plan case --

10 A. Correct.

11 Q. -- at any point in time. And you did not
12 consider whether DP&L has any constraints outside of
13 this proceeding on its next application to implement
14 a new electric security plan, correct?

15 MR. HEALEY: Objection, vague as to
16 constraints.

17 EXAMINER WILLIAMS: Could you clarify,
18 Mr. Hollon?

19 MR. HOLLON: Sure.

20 Q. (By Mr. Hollon) Are you aware of any
21 types of riders that DP&L is prohibited from
22 requesting in its next electric security plan case
23 outside of this proceeding?

24 A. The testimony of OCC Witness Kahal
25 referred to the Rider RSC and its relationship to the

1 electric security plan so that -- that is the extent
2 of my knowledge.

3 Q. So again, are you aware of any riders or
4 types of riders that DP&L is prohibited from
5 including in its next application for an electric
6 security plan case?

7 A. I am not.

8 Q. And so you mentioned the RSC. You
9 understand that DP&L currently collects revenue
10 through the -- through an RSC Rider?

11 A. Correct.

12 Q. And in your testimony you argue that
13 various commitments funded by shareholder dollars are
14 actually funded by customers through the RSC?

15 A. Correct.

16 Q. But you agree generally with me revenue
17 received by utilities is fungible?

18 A. Correct.

19 Q. And your testimony does not expressly
20 consider whether or not commitments funded by
21 shareholder dollars in the Stipulation could be
22 attributable to other sources of revenue?

23 A. That's incorrect. I looked at the filing
24 of DP&L's 10-Q from I believe that was October. That
25 mentioned the volume of shareholder dollars that were

1 going to be supporting activity in this case which is
2 about \$300 million. That did not provide information
3 as to where those dollars were coming from directly.
4 And OCC Witness Kahal draws the connection between
5 the revenue from the RSC and the spending in this
6 case.

7 Q. I'm sorry. Did you say that -- what was
8 the volume of the shareholder commitments that you
9 saw in the 10-Q?

10 A. I will have to look up the exact number.
11 I am pulling it out of my -- out of memory so. It's
12 in the testimony.

13 Q. It's in your testimony? Okay. Your
14 testimony also didn't consider expressly whether any
15 commitments funded by shareholder dollars can be
16 attributable to any new equity contributions into the
17 company?

18 A. The Stipulation mentioned contributions
19 coming from the holding company that owns DP&L and
20 making -- making those investments in -- in grid
21 modernization and general capital expenditure and but
22 when it came to my analysis of the distributive
23 coalition, I did not look at any additional sources
24 of dollars. As you mentioned, all money is fungible
25 in a balance sheet.

1 Q. In your testimony you refer to the RSC as
2 a bailout, correct?

3 A. Correct.

4 Q. But in preparing your testimony, you
5 didn't review any Commission order authorizing DP&L
6 to collect the RSC, did you?

7 A. I did not.

8 Q. Okay. So you did not review the December
9 2019 finding and order in DP&L's ESP I docket that
10 implemented its current electric security plan?

11 A. Correct.

12 MR. HOLLON: Your Honor, if I could just
13 have 2 or 3 minutes, I think I am about done.

14 EXAMINER WILLIAMS: Of course.

15 MR. HOLLON: Thank you.

16 EXAMINER WILLIAMS: Do you want to go off
17 record, or are you okay?

18 MR. HOLLON: I would like to go off the
19 record.

20 EXAMINER WILLIAMS: Okay. We will go off
21 record for 4 minutes, come back at 10:35.

22 MR. HOLLON: Thank you.

23 (Recess taken.)

24 EXAMINER WILLIAMS: It's 10:35. We will
25 go back on the record.

1 Mr. Hollern, any further questions?

2 MR. HOLLON: No, your Honor.

3 Thank you, Dr. Hill.

4 EXAMINER WILLIAMS: Thank you,
5 Mr. Hollern.

6 We had a number of other parties who
7 expressed an interest in cross-examination. Anybody
8 want to volunteer to go next? I will look for motion
9 on my screen.

10 Mr. Long.

11 MR. LONG: Thank you, your Honor.

12 - - -

13 CROSS-EXAMINATION

14 By Mr. Long:

15 Q. Todd Long on behalf of IEU-Ohio.

16 Dr. Hill, can you hear me?

17 A. I can hear you. Thank you, Attorney
18 Long.

19 Q. And you can see me?

20 A. I can. I am going to close the window
21 back here. I am getting noise from behind me.

22 All right. Thank you for your patience.

23 Q. Absolutely. Dr. Hill, generally you're
24 critical of the PUCO's settlement process in this
25 case, correct?

1 A. Correct.

2 Q. And I believe Mr. Hollon asked you, but
3 you are not aware of any party that sought to
4 intervene in this case and was denied, right?

5 A. Correct.

6 Q. And you would agree that the PUCO can't
7 force a party to intervene in a proceeding, right?

8 A. Correct.

9 Q. Now, you have not participated in any
10 settlement proceedings in any jurisdiction outside of
11 Ohio, right?

12 A. Correct.

13 Q. And you don't have any specific knowledge
14 of how other utility commissions conduct settlement
15 proceedings, correct?

16 A. Correct.

17 Q. Your direct testimony that was filed in
18 this case does not make recommendations on how to
19 change the PUCO's settlement proceedings, right?

20 A. Correct.

21 Q. Now, you are a professor of economic
22 development, right?

23 A. Correct.

24 Q. And generally you support economic
25 development projects, right?

1 A. That's incorrect. I look at economic
2 development projects based on the merits. Some
3 require excessive subsidy. Some use the power of the
4 state to extract benefits that are probably not in
5 the public's interest. Most notably I opposed the
6 financing of what's currently referred to as
7 FirstEnergy's stadium in Cleveland.

8 I was highly critical of the development
9 package -- packages that were extracted by Amazon in
10 its nationwide auction for its headquarters 2. But I
11 also -- but I do understand that making Ohio as
12 competitive a location as possible and fostering
13 entrepreneurship is essential for the future
14 well-being of the state and its residents.

15 Q. So you support economic development
16 generally, correct?

17 A. Correct.

18 Q. Now, most economic development results in
19 redistribution, right?

20 A. That's incorrect.

21 Q. Redistribution coalitions never really go
22 away, do they, Doctor?

23 A. They frequently go away because they
24 constantly morph and mutate depending on what the
25 incentive is for the particular project is. The

1 participants in general will frequently remain the
2 same as I've seen with those of the PUCO. But one of
3 the features of -- of a redistributive coalition is
4 their loose jointed fate because they don't -- all
5 members of one coalition may not share mutual
6 self-interest or another target of redistribution.

7 Q. In general redistribution coalitions as
8 an issue are always going to be around, right?

9 A. Correct, correct. They are a feature of
10 a -- of a -- of a mixed economy with government
11 regulation and government rulemaking which, by the
12 way, I support.

13 Q. You are aware that OCC represents the
14 interests of residential customers in Ohio, right?

15 A. Correct.

16 Q. If the OCC advocated to shift a cost
17 allocation to other customer classes, you would agree
18 that's a redistribution, right?

19 A. Incorrect. Would you like me to explain?

20 Q. Let me rephrase my question. If OCC
21 advocated to shift costs away from residential
22 customers onto another customer class, that is a
23 redistribution, right?

24 A. That's incorrect.

25 Q. Do you have your deposition transcript?

1 A. Not -- not with me. What I -- let me
2 explain what I mean. If there was a shifting of the
3 cost so that the cost did not reflect the cost of
4 service, then that would be a redistribution. If the
5 customer is -- if the advocate for the customer is
6 arguing for a reduction in costs because they are
7 currently being -- they are making payments that are
8 not associated with the cost of service, I would not
9 consider that to be a redistribution. It would be
10 getting closer to the market costs or the engineering
11 costs to providing the power.

12 Q. So hypothetically if OCC was part of a
13 settlement proceeding and they negotiated an
14 allocation of cost that was not connected to, say, a
15 cost-of-service study, that's a redistribution,
16 correct?

17 A. Correct.

18 Q. Okay. You have a fundamental problem
19 with intervening parties that represent narrow
20 interests, right?

21 A. Correct.

22 Q. And one way to avoid that problem you
23 believe that intervening parties should represent a
24 broad class of interests, correct?

25 A. It -- my belief is two parts. Your

1 statement is indeed correct but there's also a second
2 part which is they should not be also taking
3 advantage of that opportunity to extract narrow
4 benefits that just rewards themselves.

5 Q. So, in other words, you need a benevolent
6 group representing a broad class, right?

7 A. A self-interested benevolent group,
8 correct.

9 Q. And you agree that there could be a free
10 rider problem under that model, right?

11 A. Absolutely. I should say correct.

12 Q. A free rider exists when some people
13 obtain a benefit from the activities of others
14 without paying for it, right?

15 A. Correct.

16 Q. And you previously testified that a
17 solution perhaps to avoid the free rider problem is
18 to have nonresidential groups receive funding through
19 utility rates like what OCC receives, right?

20 A. I don't understand what you said.

21 Q. Okay. Let me rephrase. To avoid the
22 free rider problem, you've previously testified that
23 nonresidential groups should receive funding for
24 advocacy much like what OCC receives, correct?

25 A. Correct.

1 Q. Now, Doctor, you've used the word
2 obnoxious to describe aspects of the proposed
3 settlement in this case, right?

4 A. Correct.

5 Q. You would still find it obnoxious if a
6 class of customers negotiates a settlement that
7 shifts costs to another, right?

8 A. If -- not if that shift was part of a
9 broad-based public policy that came from through the
10 legislative process.

11 Q. In your view if redistribution coalitions
12 generally never really dissipate, it really becomes a
13 value judgment as to how obnoxious a settlement would
14 be, right?

15 A. There's two ways to respond to that. The
16 first is it is a value judgment. The second is best
17 explained by the comment that I put into my testimony
18 that was in The Economist's obituary to Mancur Olson,
19 who is one of the two founders of this concept, one
20 of the dangers of a mixed market economy is when
21 established and entrenched members of the economy use
22 the legislative or regulatory process to gain
23 benefits for themselves that they cannot get through
24 the marketplace.

25 The accumulation of those benefits and

1 the digging in of the vested interest around that to
2 protect the income that they've extracted through
3 nonmarket means hurts the overall efficiency of the
4 economy and distorts prices which hurts the efficient
5 allocation of resources.

6 I and I believe most economists
7 understand that as long as you have a mixed market
8 economy, redistributive coalitions will exist, and
9 I -- I -- most of my colleagues are -- I will speak
10 for myself, understand that we have to try to put
11 guardrails in place to lower the effective fishing
12 expedition of those -- of distributions securing
13 income through nonmarket means.

14 We don't have to go any farther than
15 looking at the political and economic disaster that's
16 House Bill 6 which is the ultimate expression of a
17 small redistributive coalition extracting benefits
18 and income from the people through -- by hijacking
19 the legislative process.

20 Now, I am not putting this legislative --
21 this distributive coalition on the same level, but we
22 always have to be beware of them, particularly in
23 regulatory processes.

24 I'm sorry. I couldn't make that short.

25 Q. Doctor, you are not saying that it would

1 be unreasonable for the OCC to join a settlement, are
2 you?

3 A. I can't answer that. That's their
4 judgment on this particular process. I mean, what I
5 can state, and frankly this is thinking that was
6 triggered through the deposition so I don't know if I
7 am allowed to go forward to make -- to say --

8 Q. You've answered my question.

9 A. Okay. Thank you.

10 MR. HEALEY: Your Honor, I would like the
11 witness to be able to give his full response without
12 the attorney cutting him off saying he's answered his
13 question. Thank you.

14 EXAMINER WILLIAMS: We've let him go on
15 for quite a while. I will let you address that on
16 redirect.

17 MR. LONG: Your Honor, if I could have 2
18 minutes to consult to see if I have any further
19 questions, I believe I am almost done.

20 EXAMINER WILLIAMS: Okay. We will go off
21 the record but stay online. We won't take an
22 official break.

23 (Discussion off the record.)

24 MR. LONG: Your Honor, I have no further
25 questions for Mr. Hill -- Dr. Hill.

1 EXAMINER WILLIAMS: Ms. Gibson, we are on
2 record for that, I assume. Thank you.

3 All right. Next in line for cross is Ms.
4 Bojko.

5 MS. BOJKO: Thank you, your Honor.

6 - - -

7 CROSS-EXAMINATION

8 By Ms. Bojko:

9 Q. Good morning, Mr. Hill.

10 A. Good morning, Ms. Bojko.

11 MR. HEALEY: Doctor.

12 MS. BOJKO: Oh, excuse me. Thank you.
13 My apologies.

14 Q. Dr. Hill.

15 A. Mister is okay. I mean, I never fly in
16 airplanes being called doctor. The result can be
17 scary.

18 Q. Dr. Hill, before we get started, you
19 mentioned that you do not have a copy of your
20 deposition handy; is that correct? Or can you locate
21 it?

22 A. It's on my hard drive.

23 Q. Would -- can you obtain it? I know you
24 switched offices. That's why I am asking.

25 A. No. My computer is with me, but I don't

1 have a printed copy near by.

2 Q. Okay. You have access to it if we need
3 it; is that correct?

4 A. As long as you have patience.

5 Q. Would it be easier if your counsel
6 e-mailed a copy of that to you?

7 A. No. It's in my PDF file. It's there.

8 Q. Okay. Dr. Hill, let's turn to page 6 of
9 your testimony. I want to talk a little bit more
10 about the redistributive coalition's
11 characterization. On page 6, line 16, here you state
12 that "A redistributive coalition is a relatively
13 small group that uses political or regulatory process
14 to secure benefits," correct?

15 A. Correct.

16 Q. Do you know how many parties intervened
17 in this case?

18 A. I could go back and count the
19 signatories, but I don't know any Intervenors outside
20 the signatories and OCC.

21 Q. Okay. So if I told you there were 20
22 signatory parties, would that sound accurate to you?

23 A. It's conceivable.

24 Q. And it's your understanding that only one
25 party is opposing the settlement which is OCC,

1 correct?

2 A. I don't know if others -- others are or
3 not. I assume it's just OCC.

4 Q. It's your understanding that all parties
5 that intervened in the case were invited to
6 settlement negotiations, correct?

7 A. Correct.

8 Q. If OCC is the only party actively
9 opposing the settlement, would a Stipulation need to
10 be unanimous to pass your test?

11 A. Can you restate, please?

12 Q. Sure. You just stated that you believe
13 that OCC is the only party actively opposing the
14 settlement, so if that is true, would a Stipulation
15 need to be unanimous to pass your test?

16 A. No, it would not. In fact, I would
17 contend even if every -- it's conceivable if every
18 party that intervened signed the Stipulation, there
19 is a high likelihood of negative -- of a
20 redistribution -- redistribution coalition that
21 hurts -- hurts the performance of the economy. In
22 fact, I would expect it.

23 Q. Are you aware of any Commission ruling or
24 Commission rule that requires a Stipulation to be
25 unanimous?

1 A. I do not.

2 Q. On page 7 of your testimony, you state
3 that the benefits are paid for by passing costs of
4 the rewards onto other customers; is that correct?

5 A. That's correct.

6 Q. And in the next sentence, I am on line 8
7 of page 7, you basically create a two-part test, the
8 first prong being that benefits are derived through
9 political or regulatory action and, two, the cost of
10 paying for the rewards are shifted onto the large
11 unorganized portion of society who are not members of
12 the coalition; is that correct?

13 A. That's correct.

14 Q. So by these statements in your
15 definition, there would be no redistributive
16 coalition if either, one, the benefits are not
17 derived through the political or regulatory action
18 or, two, the cost of paying for the reward is not
19 shifted onto the large unorganized portion of society
20 who aren't members of the coalition.

21 A. That's correct.

22 Q. On the bottom of pages 7 and onto page 8
23 of your testimony, you go through what I call
24 additional characteristics of the redistributive
25 coalition; is that fair?

1 A. That is fair.

2 Q. So in addition to the group being small,
3 the coalition is not seeking an overall policy
4 objective; is that correct?

5 A. The group is small. In most cases they
6 share a homogeneous set of -- of objectives. I am
7 reading through my testimony now to make certain that
8 I'm consistent. And starting on line 4 on page 8, I
9 write "The coalitions that form in response to
10 negotiations at the PUCO are not seeking a single,
11 overarching public policy objective that is mutually
12 shared. Instead, the coalition unites around the
13 dominant objective, or objectives, of the coalition's
14 organizer and then each of the other members add
15 rewards that they value and are achievable (and are
16 loosely tied to the settlement) in exchange for their
17 public support for the settlement package. What the
18 organizing company is seeking from the coalition is
19 the veneer of widespread public support for the
20 dominant objective of the organizer-the
21 investor-owned utility. Then, in a legally binding
22 quid pro quo, which is the settlement, the coalition
23 supports the entire package."

24 Q. Okay. So those -- that paragraph that
25 you just read are characteristics of the

1 redistributive coalition, correct?

2 A. Correct.

3 Q. Okay. And I am trying to outline those
4 here. So the first characteristic is that the
5 coalition -- the group is small, correct?

6 A. Correct.

7 Q. And the second is that the redistributive
8 coalition is not seeking a single overarching public
9 policy objective, correct?

10 A. In this -- in this case, yes.

11 Q. And the redistributive coalition has a
12 dominant organizer, I believe is what you've called
13 it; is that correct?

14 A. Correct.

15 Q. And the members of the coalition add
16 rewards for themselves; is that correct?

17 A. Correct.

18 Q. And then on line 8, page 8 you state that
19 those rewards are only loosely tied to the settlement
20 that they reached, correct?

21 A. Correct. What I mean by loosely tied is
22 they have to have some relevance to the settlement or
23 the case at hand.

24 Q. And then another characteristic I believe
25 you list is that the public support is given by the

1 members as a quid pro quo; is that correct?

2 A. Correct. Then in a legally binding quid
3 pro quo, which is the settlement, the coalition
4 supports the entire package.

5 Q. And you believe that limiting the size of
6 the coalition is especially important, correct?

7 A. It keeps the organizing costs reasonable,
8 that is correct. And it's an essential
9 characteristic of a redistributive coalition.

10 Q. And the group that was not part of the
11 coalition has to be a homogeneous group and large; is
12 that correct?

13 A. No, that's -- that's incorrect. The
14 group that is usually not part of it is large and
15 heterogeneous, not homogenous. That's -- the
16 heterogeneity makes it difficult to organize them as
17 well as the principle of rational ignorance.

18 Q. Thank you for that clarification. The
19 large -- and you believe that the large group, the
20 heterogeneous group that you just stated is not
21 represented in the proceeding; is that correct?

22 A. That's correct.

23 Q. And one of the characteristics of the
24 coalition is that it has to spread costs over a
25 larger population; is that correct?

1 A. That's what the re -- the redistributive
2 characteristic is that the costs for the -- for the
3 benefits is paid for over a -- those that are not
4 participating in the rewards.

5 Q. So there -- under the redistribution
6 coalition -- redistributive coalition theory, there
7 is a redistribution or cost shift between customer
8 class, correct?

9 A. That there is cost shifting across
10 customer classes; is that what you are saying?

11 Q. I said between but across, sure.

12 A. That -- that -- I won't use the term
13 customer classes, that there is cost shifting between
14 those that participate -- that those who are not part
15 of the coalition and those that are part of the
16 coalition.

17 Q. And so if you do not take out of one
18 group of people, those a part of the coalition versus
19 those not, if you do not take out of one of those
20 groups of customers and give to another, there is no
21 redistributive coalition, correct?

22 A. If the unorganized group is not paying
23 funds, is not paying for benefits they -- hold on.
24 That's a double negative.

25 I am not trying to be clever. I am

1 having trouble with English on this one. If those
2 who are not part of the redistributive coalition are
3 paying money that ends up in the -- that ends up --
4 or providing benefits that are redirected to the
5 members of the coalition redistribution takes place.
6 We have to have redistribution.

7 Q. And I believe another characteristic of
8 this redistributive coalition is that the process in
9 which the redistribution coalition is participating
10 is intentionally opaque and technical, correct?

11 A. What I hope I stated in my testimony is
12 that the document and information is presented in an
13 opaque and technical form which increases the costs
14 of obtaining knowledge about the proceedings.

15 Q. And another characteristic is that the
16 coalition members do not represent any interests
17 other than their own, correct?

18 A. That is correct.

19 Q. And in the case that you are here
20 testifying today about, the coalition is the
21 signatory parties, correct?

22 A. That is correct. I am having some
23 difficulty figuring out where the Staff of the PUCO
24 fits -- fits in that characterization, but the other
25 signatory parties clearly the answer is yes.

1 Q. Under the redirect -- on page 5, line 13,
2 of your testimony, it's your theory that under the
3 redistributive coalition the organizer, DP&L, paid
4 for the support of the various members of the
5 coalition; is that correct?

6 A. That is what I wrote of my intention
7 of -- of when I wrote that was that the organizer
8 ensures that the redistribution takes place.

9 Q. And you would agree that if the signatory
10 party obtains benefits for a broader group other than
11 itself and it would be difficult for it to become a
12 redistributive coalition, correct?

13 A. No, that's incorrect.

14 Q. Throughout your testimony you tied the
15 benefits of the settlement to the RSC charge,
16 correct?

17 A. I do.

18 Q. And on page 17 of your testimony, you
19 state that under the settlement DP&L will be allowed
20 to keep charging customers its so-called rate
21 stabilization charge, or RSC, correct?

22 A. Correct.

23 Q. But to be clear, the settlement does not
24 create the RSC, does it?

25 A. No. RSC already exists, but the

1 settlement has language -- I am trying to figure out
 2 where. The settlement has language that refers back
 3 to the current ESP and the -- and it implies the RSC.
 4 This is what OCC Witness Kahal spent a significant
 5 amount of time on. Yeah, so -- so the -- so the
 6 language itself in the Stipulation is on page 43,
 7 section 19a and page 48, part c, and goes to page 49.
 8 And it -- it is rather opaque but that's where I see
 9 the signal that connects the ESP and R -- Rider RSC
 10 to the settlement.

11 MS. BOJKO: May I have my question
 12 reread, please.

13 EXAMINER WILLIAMS: Sure.

14 Karen.

15 (Record read.)

16 MS. BOJKO: Your Honor, I move to strike
 17 everything after the first sentence of his answer
 18 which actually answered my question, and everything
 19 after that did not.

20 EXAMINER WILLIAMS: I am going to leave
 21 it in. It gives explanation of the context of his
 22 response, but I will certainly give you more
 23 questions if you want to further probe that.

24 Q. (By Ms. Bojko) So just so the record is
 25 clear because you went on, the RSC currently exists

1 and customers are currently paying the RSC, correct?

2 A. Correct.

3 Q. Okay. And that would include commercial
4 and industrial customers that are currently paying
5 the RSC charge, correct?

6 A. Correct.

7 Q. And is it your understanding that
8 customers will continue to pay the RSC charge with or
9 without the settlement?

10 MR. HEALEY: Objection.

11 EXAMINER WILLIAMS: Basis?

12 MR. HEALEY: Calls for a legal
13 conclusion. Whether the RSC will or will not
14 continue is based on interpretation of the statutes
15 that are at play in this very case; and, therefore,
16 she is asking Mr. Hill to weigh in on what the final
17 and legal ruling on the PUCO will be.

18 MS. BOJKO: Actually I asked Dr. Hill
19 whether the -- it was his understanding or not. I
20 didn't ask him for a legal opinion.

21 EXAMINER WILLIAMS: Objection overruled.
22 I will let him answer.

23 THE WITNESS: Can you repeat the
24 question, please?

25 Q. Sure. Dr. Hill, is it your understanding

1 that customers will continue to pay the RSC charge
2 with or without the settlement?

3 A. The honest answer is that I found the
4 discussion on the sections that I mentioned
5 between -- on pages 43 and 48 so confusing I can't
6 answer the question. My assumption is that it will
7 continue, but I have great difficulty in
8 understanding what that language in the Stipulation
9 means.

10 Q. I hate to do this, Dr. Hill, but at this
11 time we are going to need that deposition pulled up.
12 If you could find that and pull it up, that would be
13 great.

14 EXAMINER WILLIAMS: Let's go off record
15 for a minute.

16 (Discussion off the record.)

17 EXAMINER WILLIAMS: All right. Back on
18 the record.

19 Ms. Bojko.

20 MS. BOJKO: Thank you.

21 Q. (By Ms. Bojko) Could you turn to page 69
22 of your deposition transcript, please, Dr. Hill. And
23 on line 17, the question is --

24 A. Slow. You are way ahead of me. 17.

25 Q. Page 69, line 17, the question "And that

1 customer's will continue to pay the RSC charge with
2 or without the settlement?

3 "Answer: Yes, because it's part of a
4 different document or a different decision." Did I
5 read that correctly, sir?

6 A. You did.

7 Q. Thank you. On page 21 of your
8 testimony -- I am going to go back to your testimony.
9 Page 21 of your testimony you noted that the Ohio
10 Supreme Court terminated the Distribution
11 Modernization Rider; is that correct?

12 A. Correct.

13 Q. And to your knowledge, has the Supreme
14 Court terminated the rate stabilization charge?

15 A. I don't have any knowledge one way or the
16 other.

17 Q. Well, it's still continuing, correct?

18 A. What did you say?

19 Q. I said it's still continuing, so they
20 likely did not; is that a fair assumption?

21 A. That's correct.

22 Q. And to your knowledge, the Commission
23 hasn't terminated the RSC either under the same
24 rationale, correct?

25 A. Correct.

1 Q. Can you turn to page 17 of your
2 testimony, please, line 11.

3 A. I'm there.

4 Q. On line 11 of page 17, you use the word
5 "bailout." Do you see that?

6 A. I do.

7 Q. That reference is to the RSC charge, that
8 the RSC charge is a bailout; is that correct?

9 A. That's correct.

10 Q. And you also state that the bailout is
11 intended to improve Dayton Power and Light's
12 financial structure and credit rating, correct?

13 A. That's correct.

14 Q. And you don't -- isn't it true that you
15 don't have a citation and you don't know where you
16 got that information about the Commission improving
17 the financial structure and credit rating?

18 A. I was very confused at that point in my
19 deposition, but now that I am actually looking at the
20 document, there's footnote 15 and footnote 15 says
21 "See direct testimony of Matthew Kahal on behalf of
22 the Office of Ohio Consumers's Counsel."

23 Q. Okay. So just so we're clear, even
24 though the citation 15 isn't until the end of the
25 paragraph, you -- it's your understanding from

1 Mr. Kahal's testimony that the RSC was intended to
2 improve Dayton's financial structure and credit
3 rating.

4 A. That the -- that the RSC was the vehicle
5 that was used to improve the financial structure of
6 Dayton Power and Light. When I went back and read
7 Kahal's testimony after the deposition, it -- he
8 mentions that RSC was originally created to
9 compensate Dayton Power and Light for stranded
10 customers who -- during the polar vortex.

11 Q. Your knowledge comes strictly from
12 Mr. Kahal, correct?

13 A. Correct.

14 Q. You can't provide me a citation to a
15 Commission order that states that fact, correct?

16 A. That is correct.

17 Q. And, in fact, the -- isn't it true that
18 the Commission has ruled that the RSC is not an
19 equivalent economic stability charge or financial
20 integrity charge?

21 A. I can't testify to that.

22 Q. And you don't know whether the Commission
23 has specifically ruled that the RSC pays Dayton Power
24 and Light for costs associated with POLR obligations,
25 do you?

1 A. The POLR obligations?

2 Q. Yeah, provider of last resort.

3 A. The testimony of Kahal indicates that
4 that is no longer part -- that's no longer the use of
5 RSC.

6 Q. I was asking if you are aware that in
7 2016 the Commission issued an order that stated that
8 the RSC was authorized to pay DP&L for costs
9 associated with POLR obligations.

10 A. With POLR obligations?

11 Q. Yes.

12 A. No, I am not aware.

13 Q. Your -- it's your testimony that the RSC
14 does not compensate Dayton Power and Light for any
15 costs it actually incurs, correct?

16 A. That's incorrect.

17 Q. Okay. So you believe -- I thought you
18 stated in response to Mr. Long as well that you
19 believe that the RSC is not a component of the costs
20 of service.

21 A. That's correct. That is -- that is my
22 interpretation of the purpose of Rider RSC.

23 Q. Okay. And -- and so if that RSC is
24 reduced by an economic development incentive credit,
25 then it wouldn't be redistribution because the RSC

1 isn't a cost to serve customers.

2 MR. HEALEY: Objection. That's
3 incredibly compound, your Honor. Ask Ms. Bojko to
4 break it up, if that's all right.

5 EXAMINER WILLIAMS: Ms. Bojko, are you
6 able to break it into smaller bites?

7 MS. BOJKO: I will try.

8 EXAMINER WILLIAMS: Thank you.

9 Q. (By Ms. Bojko) I think -- I'm sorry. I
10 was trying to shortcut. I think you also told
11 Mr. Long that if -- if a cost or a charge is not a
12 component of the cost to serve, then it wouldn't be
13 redistribution to reduce that cost; is that correct?

14 A. Can you try that one again? There are
15 too many negatives.

16 Q. You stated to me that you don't believe
17 the RSC is a component of the cost of service,
18 correct?

19 A. I believe that RSC is a rider whose
20 primary intention is to stabilize the financial
21 condition of DP&L.

22 Q. Okay. And you believe that from
23 Mr. Kahal; is that correct?

24 A. Correct.

25 Q. And you believe that that description of

1 the RSC is similar to the Distribution Modernization
2 Rider, correct?

3 A. Correct.

4 Q. And -- and on that basis you believe that
5 the RSC is unlawful; is that right?

6 A. I can't testify to whether it's lawful or
7 not. I testified to the fact that it's
8 redistribution.

9 Q. Okay. And I thought you said to Mr. Long
10 that if -- that because it's not a component or a
11 cost of service, that the RSC is a redistribution; is
12 that right?

13 A. If the RSC is funded by a class of
14 customers as providing cost relief to another class
15 of customers, it's redistribution.

16 Q. Okay. You are aware that parties have
17 challenged the rate stabilization charge before the
18 Commission before, correct?

19 A. I've heard it mentioned in a committee --
20 in committee meetings that I have -- I attend, but I
21 don't have any specific knowledge.

22 Q. And you don't know then whether your
23 client in this case, the Consumers' Counsel, has made
24 that challenge.

25 A. I have no -- no knowledge.

1 Q. Isn't it true that the settlement
2 actually terminates the Dayton Power & Light's RSC
3 charge?

4 A. Seeing that the letters RSC aren't
5 explicitly mentioned in the Stipulation, it's opaque
6 and difficult to understand what the real -- what the
7 direct impact is. In fact --

8 EXAMINER WILLIAMS: I'm sorry. Is the
9 answer continuing? Am I the only one not hearing it?

10 THE WITNESS: Can you hear me, your
11 Honor?

12 EXAMINER WILLIAMS: Hold, please.

13 EXAMINER SCHABO: Hold on just a second.
14 Let Judge Williams get his audio back up.

15 EXAMINER WILLIAMS: Let's go off the
16 record.

17 (Discussion off the record.)

18 EXAMINER WILLIAMS: Let's go back on the
19 record.

20 Karen, before my technology went out on
21 me, I believe we were in the middle of a question and
22 response, although we did catch everyone's attention
23 before we got too far down the road. So if you would
24 go back to the last question and last response, read
25 that to me, we should be current.

1 (Record read.)

2 EXAMINER WILLIAMS: Okay. If you are
3 able to pick up your testimony from there, Dr. Hill,
4 please do. If you would rather have Ms. Bojko
5 proceed with an additional question, that's fine as
6 well.

7 THE WITNESS: Thank you, your Honor.

8 A. The -- the section that hints at this
9 relationship are the pages that I mentioned before in
10 the Stipulation. And it's just really hard to
11 understand what their -- what the intent or the
12 impact is and so this would be page 43, Section 19a;
13 page 48, part c that leads to 49. It seems that --
14 that in my reading and comparing it to what Witness
15 Kahal, OCC Witness Kahal had in his document, that
16 some pains must have been taken to keep -- to keep
17 the Rider RSC out of the conversation, or out of the
18 Stipulation.

19 Q. Are you finished, Mr. Hill -- Dr. Hill?

20 A. I am.

21 Q. We'll talk -- well, first of all, let's
22 just clarify, have you talked to signatory parties to
23 ask their intent?

24 A. I have not.

25 Q. Okay. Let's back up a minute. According

1 to you, you believe that the RSC is a nonbypassable
2 charge designed to stabilize DP&L's financial
3 integrity, correct?

4 A. Correct.

5 Q. And the settlement prevents
6 implementation of a nonbypassable charge related to
7 POLR risk stability or financial integrity, correct?

8 MR. HEALEY: Objection. That calls for a
9 legal conclusion regarding the legal effect the
10 settlement might have if it were to be approved and
11 that's well outside the scope of Dr. Hill's testimony
12 which is on the redistributive coalition anyway so.

13 EXAMINER WILLIAMS: I will let him
14 testify as to his understanding of the question.

15 THE WITNESS: Your Honor, I missed what
16 you said. I have got to turn up my hearing aids
17 here, more technology.

18 EXAMINER WILLIAMS: I'm going to allow
19 you to provide your understanding of the answer to
20 the question. If you need it read back, let me know.

21 THE WITNESS: I need the question
22 restated.

23 MS. BOJKO: Your Honor, I will restate.

24 Q. (By Ms. Bojko) Let's turn to pages 45 and
25 46 of the settlement. You referenced other pages but

1 let's actually look at 45 and 46. Do you see
2 Provision 20 at the bottom of page 45? Are you
3 there, Dr. Hill?

4 A. Not yet.

5 Q. Oh.

6 A. All right. Provision 20, "ESP IV," page
7 45?

8 Q. Correct.

9 A. I see it.

10 Q. Okay. In this section the settlement
11 specifically says that Dayton's "ESP IV application
12 shall not seek to implement any nonbypassable charge
13 to customers related to provider of last resort
14 risks, stability, financial integrity, or any other
15 charge that is substantially calculated based on the
16 credit ratings, debt, or financial performance of any
17 parent or affiliated company of DP&L." Did I read
18 that correctly?

19 A. You read it correctly.

20 Q. So if you believe the RSC is a financial
21 integrity charge and/or that it is used to assist
22 Dayton Power and Light with its credit ratings, this
23 provision would address your concern, correct?

24 A. After a procedure that is initiated no
25 later than 2023.

1 Q. Okay. So -- so this provision terminates
2 or prohibits Dayton from filing its next ESP
3 application with a charge such as the RSC, correct?

4 MR. HEALEY: Objection.

5 EXAMINER WILLIAMS: I am going to allow
6 the answer.

7 A. Well, the answer is yes, depending on the
8 conclusion of that process. Also as I looked at this
9 Stipulation, all of the costs and the redistribution
10 is scheduled to take place over a four-year period
11 anyway. So I believe we -- we are talking about the
12 redistribution that's taking place I argue through
13 RSC through the years 2021 and 2024. Now, if there
14 is a filing that takes place in 2023, then it's going
15 to be in effect at the end of the four-year period
16 that's covered by the Stipulation.

17 Q. Okay. But -- but if there was no
18 settlement, it's your understanding that the RSC
19 charge could continue until the Commission orders
20 otherwise, correct?

21 A. This is where I have to give an
22 ineloquent response of I guess so. I don't know
23 any -- it's in effect. It doesn't sunset, so I
24 expect it to continue.

25 Q. So you would agree though that

1 eliminating the RSC charge is a benefit to customers,
2 correct?

3 A. I -- yes.

4 Q. Okay. And by the paragraph that we read
5 on the bottom of page 45, going over to 46, the
6 prohibition of the charge is more expansive than just
7 an RSC. RSC is not mentioned in here because this
8 provision includes more than the RSC charge, correct?

9 A. I don't have knowledge. If you tell me
10 so, I believe you.

11 Q. Well, it doesn't mention RSC, so it would
12 apply to all charges that are related to any of the
13 listed items, correct? It would prohibit any charge
14 related to those listed items.

15 A. Correct.

16 Q. And are -- to your knowledge the
17 application that was originally filed, it didn't
18 contain this termination of the rate stability charge
19 or any other similar charge, did it?

20 A. I have no knowledge.

21 Q. And if the -- if -- if this provision
22 wasn't in the original application, this settlement
23 would be beneficial with respect to customers,
24 correct?

25 A. I don't understand the question.

1 Q. Fair. If there were -- if there was no
2 termination of the RSC or any of these types of
3 listed charges in the application that Dayton filed,
4 a modification to that application that includes the
5 termination would be a benefit under the settlement
6 to customers, correct?

7 A. The -- the answer is your statement is
8 correct but what is in paragraph 20 is contingent.
9 It's not fact. So all this says is that DP&L will
10 file an electronic security plan and won't seek those
11 charges but that's -- that doesn't affect the
12 redistribution that we are currently considering over
13 the four-year period in the Stipulation.

14 Q. Okay. So you said it's contingent. It
15 does require DP&L to file an ESP plan no later than
16 October 21, 2023, correct?

17 A. Correct.

18 Q. And it does state that in that
19 application DP&L is prohibited from including a
20 nonbypassable charge to customers related to provider
21 of last resort risk, stability financial integrity,
22 or any other charge that is substantially calculated
23 based on the credit ratings, debt, or financial
24 performance of any parent or affiliated company of
25 DP&L, correct?

1 A. That's correct.

2 Q. And under this paragraph in your -- it's
3 your understanding that this would prohibit a charge
4 that is similar to the Distribution Modernization
5 Rider too, correct?

6 MR. HEALEY: I am going to make the same
7 objection, your Honor. I don't mean to be
8 repetitive, but counsel is asking questions about
9 whether this would prohibit charges. It prohibits a
10 request in an application. Those are different
11 things and that's a different legal conclusion so I
12 object to this repeated line of questioning on the
13 legal impact of 20a because it's muddling the record
14 as to between what the legal impact of a Commission
15 ruling in that case will be and what this Stipulation
16 actually says about what will be filed.

17 MS. BOJKO: Your Honor, I can rephrase
18 because I -- I did not intend to -- I am not asking
19 him legal opinion, first of all, and I think Dr. Hill
20 is well aware that, I believe, he is not an attorney
21 and I am not asking his legal opinion.

22 EXAMINER WILLIAMS: I'll sustain the
23 objection and let you reask the question.

24 MS. BOJKO: Okay.

25 Q. (By Ms. Bojko) For clarity though, it's

1 your understanding the witness in this case,
 2 Dr. Hill, who is testifying, it's your understanding
 3 that the provision on the bottom of page 45, 20A,
 4 would prohibit Dayton Power and Light from including
 5 in its ESP IV application a charge -- a nonbypassable
 6 charge to customers related to provider of last
 7 report risk, stability, financial integrity, or any
 8 other charge that's substantially calculated based on
 9 the credit ratings, debt, or financial performance of
 10 any parent or affiliated company, correct?

11 A. That is correct.

12 Q. Okay. Similarly, it's your
 13 understanding, Dr. Hill, that a charge similar to the
 14 Distribution Modernization Rider would not be allowed
 15 to be included in DP&L's ESP IV application under the
 16 same provision of the settlement.

17 A. As long as we restrict the conversation
 18 to the word "application," that's correct.

19 Q. Thank you. Dr. Hill, the RSC charge is a
 20 per kWh charge, correct?

21 A. I believe that it is, but I can't testify
 22 conclusively.

23 Q. Do you -- so it's fair to say that you
 24 don't know what the kWh charge is?

25 A. Oh, I know what a kWh charge is. I just

1 don't know if RSC is calculated on kWh. Most riders
2 are.

3 Q. That's not what I meant. Sorry,
4 Dr. Hill. I meant you cannot tell me today what the
5 level of that kWh charge or RSC for the various
6 classes is.

7 A. Correct.

8 Q. And you can't tell me how much
9 manufacturers are paying under the current RSC
10 charge, can you?

11 A. I cannot.

12 Q. It's your understanding that in the
13 settlement some customers will receive an economic
14 development incentive kWh charge, correct? Or
15 credit, excuse me. Let me rephrase.

16 Under the settlement it's your
17 understanding that some customers will receive an
18 economic development incentive on a per kWh basis.

19 A. A very small -- a very small number of
20 customers, correct.

21 Q. And it's your understanding that that
22 economic development incentive credit will lower
23 those customers' bills, correct?

24 A. For the -- you know, I should have added
25 this up. Hold on.

1 THE WITNESS: Give me a second please,
2 your Honor.

3 EXAMINER WILLIAMS: Sure.

4 Q. (By Ms. Bojko) Dr. Hill, I didn't ask you
5 to add anything up. I can rephrase my question.

6 EXAMINER WILLIAMS: Okay. Dr. Hill, we
7 will proceed on -- Dr. Hill, if you want to address
8 additional information, we will let your attorney get
9 that from you on redirect, so we will let Ms. Bojko
10 proceed with the other question.

11 THE WITNESS: Yeah. I got -- so there
12 are --

13 EXAMINER WILLIAMS: Dr. Hill, I've ruled
14 that we are going to allow this testimony if it comes
15 in via your attorney on redirect, so Ms. Bojko can
16 proceed with her cross-examination questions.

17 MS. BOJKO: Thank you.

18 Q. (By Ms. Bojko) If the economic
19 development is a credit on the customers' bills, it
20 will have the effect of -- of lowering the customers'
21 bills, correct?

22 A. For that small number of customers, that
23 is correct.

24 Q. Okay. And it's your understanding that
25 customers who will receive the economic development

1 incentive will also pay the rate stabilization
2 charge, correct?

3 A. That is correct.

4 Q. And you did not know sitting here today
5 how the economic development incentive credit
6 compares to the rate stabilization charge on a kWh
7 basis, do you?

8 A. Correct.

9 Q. And you are not challenging whether the
10 economic development incentives have social merit,
11 correct?

12 A. That -- that's partially correct.

13 Q. Okay. And your concern is how the
14 economic development incentives are paid for,
15 correct?

16 A. I have two concerns. One is the way in
17 which they are paid. The other is the very small
18 number that are awarded coupled with the fact they
19 become benefits of membership to specific
20 industrial -- industry organizations.

21 Q. And you are aware, sir, that the economic
22 development incentives that you are talking about are
23 paid for through shareholder dollars, correct?

24 A. I believe that's incorrect.

25 Q. Okay. Let's turn to page 36 of the

1 settlement. Are you there?

2 A. I am.

3 Q. Okay. Page 36 of the settlement, if you
4 look at the top paragraph at the top of that page,
5 the first full sentence, it states "The costs of
6 these incentives and grants will be funded by Dayton
7 Power and Light with shareholder dollars and not
8 recovered through the IIR or other rates," correct?

9 A. That's correct.

10 Q. And regardless of whether the economic
11 development incentives are paid or not, Dayton Power
12 and Light will still continue to receive moneys
13 associated with the rate stabilization charge,
14 correct?

15 A. That is correct.

16 Q. And all customers will continue to pay
17 that rate stabilization charge whether or not the
18 economic development incentives are paid, correct?

19 A. That's correct.

20 Q. And if the economic development
21 incentives are not paid, Dayton will not return funds
22 to customers, will it?

23 A. I would be surprised -- I would be
24 surprised if it did.

25 Q. So without these incentives to customers,

1 those customers that are paying the RSC -- excuse me.
2 Strike that.

3 So without these incentives to customers
4 that are already paying the RSC, Dayton shareholders
5 will receive more funds than they otherwise would,
6 correct?

7 A. That is correct.

8 Q. And the Stipulation does not say that the
9 RSC charge or RSC revenue will be used to pay the
10 economic development incentives, does it?

11 A. It's my interpretation that the nature of
12 the RSC, since it is not directed at any specific
13 use, enters Dayton Power and Light's books, it
14 becomes fungible money, and approximately 10 percent
15 of RSC is being redistributed to members of this
16 coalition which leads me to question as to the
17 reasonableness of the -- of that portion of the RSC
18 charge. My argument would be that if it gets
19 renegotiated to members of the redistributive
20 coalition, there's an opportunity cost and those
21 funds should be returned to ratepayers.

22 Q. Okay. So just so I'm clear, I understand
23 you -- you referenced -- you are referencing
24 10 percent being shaved off of the RSC revenue, but
25 the Stipulation itself does not say that the RSC

1 charge or RSC revenue will be used to pay the
2 economic development incentives in the Stipulation,
3 does it?

4 A. That is correct. The Stipulation does
5 not indicate the original source of the funding. My
6 concern isn't bookkeeping. My concern is where the
7 original source of the funding comes from which is
8 the customer.

9 Q. Okay. And to your point the settlement
10 does not tie the economic development incentive to
11 any particular charge, correct?

12 A. That is correct.

13 Q. Right. And so you keep stating the
14 original source, and we read that the source is
15 shareholder dollars; is that correct?

16 A. That's incorrect. The ultimate source is
17 bills that are paid by ratepayers.

18 Q. Okay. Does --

19 A. The original source is company revenue.

20 Q. So the Stipulation states though that the
21 economic development incentives will be paid by
22 shareholders, correct?

23 A. The stipulation states that, and I
24 believe the Stipulation is incorrect in its fact.

25 Q. And you say that this claim of

1 shareholder dollars is an accounting fiction,
2 correct?

3 A. It is a -- I do say in my statement
4 that's an accounting fiction, that is correct.

5 Q. But you are not claiming that the
6 shareholder dollars do not exist, are you?

7 A. I am not claiming the company profits do
8 not exist. The stipulation is using the term
9 shareholder dollars instead of company profits.
10 Company profits begin with revenues paid by its
11 customers.

12 Q. And you are not trying to state here
13 today that the Commission --

14 MR. HEALEY: Your Honor, I don't think he
15 was done. He paused, and Ms. Bojko very quickly
16 launched into the next question.

17 EXAMINER WILLIAMS: Well, actually I
18 would accept that interpretation of how Ms. Bojko
19 responded, but, Doctor, if you want to proceed with
20 your response.

21 MR. HEALEY: I wasn't suggesting it was
22 anything improper by Ms. Bojko.

23 EXAMINER WILLIAMS: Thank you,
24 Mr. Healey.

25 Doctor.

1 THE WITNESS: I was actually completed.

2 MS. BOJKO: I know what his pause means,
3 Mr. Healey.

4 MR. HEALEY: Thanks for backing me up,
5 Dr. Hill.

6 THE WITNESS: I have to confess I am used
7 to the speed and rapidity of Ms. Bojko's speaking
8 process and thinking process.

9 EXAMINER WILLIAMS: Thank you, Doctor.

10 Q. (By Ms. Bojko) I will take that as a
11 compliment, Dr. Hill.

12 Okay. Back to -- okay. I think my next
13 question was you are not suggesting nor are you
14 proposing that the Commission control the spending of
15 what you are calling -- I used the term shareholders'
16 dollars; you used the term profits, correct?

17 A. You said that in a form of a negative, so
18 once again, I am just confused so.

19 Q. I will start over.

20 A. Break that down for me.

21 Q. I couldn't hear the term you used with
22 our interruption there so. Okay. You are not
23 claiming that the Commission does or should direct
24 the spending of a utility's profits, are you?

25 A. I am. The -- the RSC is a regulated

1 charge. The RSC should have a public purpose
2 associated with it. And as a regulated utility, RSC
3 is only collected due to the police powers of the
4 state. So there is a -- in any form of regulation
5 there is always a question about sources of funds and
6 uses of funds. This is perfectly consistent with the
7 regulation of a utility.

8 Q. So it's your claim today that the return
9 that a utility uses cannot be used for economic
10 development incentive purposes.

11 A. I am not making that claim at all. What
12 I am claiming is recognizing the spending for what it
13 is. Now, I believe that what the redistributive
14 coalition in this case has done is taken a series of
15 spending -- hold it.

16 Siri was telling me he didn't understand
17 my answer. Shut up.

18 All right. So getting back away from
19 Siri, there are a number of benefits that the
20 redistributive coalition is receiving. Many of them
21 are meritorious. Many of them could be supported by
22 public policy. My argument is that this is the wrong
23 forum. So economic development spending belongs --
24 is a -- should be a province of the legislatures
25 through the Development Services Administration or

1 JobsOhio.

2 In this particular case you've got
3 three -- four trade associations directing who the
4 winners and losers are from this particular set of
5 economic development -- economic development
6 incentives. This is an inappropriate forum for those
7 decisions. If the PUCO is delegating the economic
8 development policy and health care policy of the
9 state to private membership associations, it's
10 inappropriate.

11 Q. Isn't it true, Dr. Hill, that there is --
12 the General Assembly has actually given the PUCO that
13 directive to do just that, to direct economic
14 development incentives to customers?

15 A. The -- the legislature has empowered the
16 PUCO to customize individual rates underneath the
17 reasonable arrangements authority which, by the way,
18 implies there are unreasonable arrangements and has
19 distorted market judgments in so doing.

20 Q. Okay. So let's look at this settlement
21 on page 35. The settlement does, in fact, state that
22 these economic development incentives are "to assist
23 Ohio businesses and healthcare providers with their
24 expenses so that they are better able to respond to
25 financial consequences of COVID-19 and restart Ohio's

1 economy in DP&L's service area, and to further State
2 policies," like the one you just mentioned, "and
3 enhance the State's competitiveness in the national
4 and global economies," correct?

5 A. That's what it says.

6 Q. And you are not here today to claim that
7 the settlement specifically directs dollars collected
8 through the RSC to signatory parties, are you?

9 A. I am -- I am suggesting that the
10 settlement is directing revenues that are collected
11 from the customers of DP&L to approximately 67
12 companies, 7 hospitals, and a grocery store, and 1
13 University.

14 MS. BOJKO: Your Honor, may I have that
15 question read back? I must have missed a verb or
16 part of it.

17 EXAMINER WILLIAMS: Karen, will you read
18 it back, please.

19 (Record read.)

20 Q. (By Ms. Bojko) Dr. Hill, I am asking you
21 specifically about your tie to RSC in your testimony.
22 Are you claiming that the settlement specifically
23 directs dollars collected through the RSC charge to
24 signatory parties?

25 A. I am inferring it, yes.

1 Q. Okay. But you -- but the settlement
2 doesn't state that. That's just your inference,
3 correct?

4 A. That is correct. That's my judgment.

5 Q. And you talked a little bit about company
6 profits. To your -- well, first of all, you are not
7 a rate of return witness or expert, are you?

8 A. Correct.

9 Q. And is it your understanding that a rate
10 of return is the opportunity for a utility company to
11 earn profits?

12 A. The rate of return is calculated based on
13 the Company's profits.

14 Q. Well, revenue requirement -- let's back
15 up. The revenue requirement includes a rate of
16 return that allows the company an opportunity to earn
17 profits; is that correct?

18 A. That's incorrect. Profits is the
19 difference between expenses and revenue.

20 Q. Right. So the revenue requirement in a
21 rate case is established including a return so that a
22 utility has an opportunity after its expenses to earn
23 a return on its investment, correct?

24 A. That's correct.

25 Q. Earlier I think you -- you stated

1 something about Dayton's 10-Q that I would like to
2 clarify. Let's just turn to the testimony. You said
3 you couldn't remember in the testimony. It's on page
4 16, footnote 14. In response to I believe you --
5 Mr. -- Mr. Hollon or Mr. Long responded that you
6 reviewed the Company's 10-Q; is that correct?

7 A. That's correct.

8 Q. And is it your understanding that -- I
9 think you said 300 million. Did you intend to say
10 30 million?

11 A. I did. I had a decimal point problem.

12 Q. Of the 30 million, you are stating that
13 the shareholder funding for various programs from
14 Dayton totals about approximately 7.5 million a year;
15 is that correct?

16 A. I wrote the spending from cash flow
17 generated by the company's profits averages
18 \$7.5 million a year.

19 Q. And that's consistent with the 10-Q
20 filing then?

21 A. With the 10-Q filing as well as Witness
22 Kahal's testimony.

23 Q. Okay. And just to be clear, the
24 reference to the 7.5 million, it includes other
25 funding for other benefits in the settlement, not

1 just the economic development incentive.

2 A. That's correct. It's -- it is the sum of
3 benefits that are attributed to being paid for by
4 stockholders -- stockholder earnings they call it or
5 stockholder -- stockholder's money.

6 Q. Well, let's turn to page 12 of your
7 testimony.

8 A. Did you say 12?

9 Q. Yes. On page 12 -- let me find a line
10 number for you. Line 6, you state that the
11 coalition, the redistributive coalition, does not
12 represent a diverse group of interests; is that
13 correct?

14 A. It's actually on line 7 what I write.
15 Well, let's start with 6. "DP&L witness Schroder
16 likewise touts the alleged diversity of signatory
17 parties: 'The Stipulation is supported by parties
18 representing a wide range of interests, including the
19 interests,'" da, da, da.

20 If you go down to line 18, I say "They do
21 represent a broader group and do not show, let alone
22 prove, that the Settlement is good policy." The
23 point I am making is that the -- those that signed
24 the Stipulation are -- indeed on their own have wide
25 interests. That's part of the -- what I testified

1 to, the redistributive coalition. What I am also
2 stating is they do not represent a group that's
3 bigger than themselves.

4 Q. Okay. Is it your understanding -- on
5 page 5 of your testimony you list out the
6 Commission's three-part settlement test, correct?

7 A. In short form, yes.

8 Q. Okay. And isn't it true that a diversity
9 requirement is not part of the test?

10 A. What it says is there is -- there is not
11 a requirement of diversity in what I have written on
12 page 5.

13 Q. You are not contesting here today that
14 the parties to the settlement, the signatory parties,
15 were not knowledgeable or capable, are you?

16 A. No, no. My argument is they are
17 knowledgeable and capable of negotiating in their own
18 interests. If you go to the top of page 12 with the
19 first line, what I write at that point is "The
20 critical sentence in the DP&L Settlement is the end
21 of the first paragraph its second page: 'This
22 Stipulation accommodates the diverse interests
23 represented by the Signatory Parties and is entitled
24 to careful consideration by the Commission.'" My
25 entire testimony hinges on the word "represented."

1 And I believe that they represent nobody but
2 themselves.

3 MS. BOJKO: Your Honor, I move to strike
4 everything starting with if you go to page 12. I
5 actually was not asking him anything about diversity.
6 I asked him if he was contesting whether the parties
7 were knowledgeable and capable and he answered that
8 and then went on a discussion on a different page
9 about a different topic.

10 EXAMINER WILLIAMS: I note your question
11 leading into that was about one of the verses
12 outlined in the three-prong test. I will let the
13 answer stand there.

14 MS. BOJKO: Thank you.

15 Q. (By Ms. Bojko) All right. Let's go back
16 to your statement that you are representing that the
17 signatory parties are only representing their own
18 interests. Have you conferred with each business,
19 commercial, and governmental signatory party to
20 determine its motives and objectives?

21 A. No.

22 Q. So you don't know what each party
23 represents or doesn't represent, correct?

24 A. Correct.

25 Q. On page 14, you say that there is a core

1 group of parties that form the coalition; is that
2 correct?

3 A. What line?

4 Q. 20.

5 EXAMINER WILLIAMS: I'm sorry. I don't
6 have a line 20 on page 13.

7 MS. BOJKO: It's page 14, line 20.

8 EXAMINER WILLIAMS: Okay.

9 A. So in my answer to question 14 on line 20
10 is "Although not literally identical in each PUCO
11 case, there is a core group of parties that
12 consistently participate in PUCO electric
13 proceedings, especially larger proceedings where more
14 money is available for redistribution. There are
15 similarities in the types of organizations that
16 signed on in support of each ESP, and many of those
17 same parties are represented here as signatories to
18 the Settlement."

19 Q. Okay. First of all, we are not talking
20 about an ESP proceeding here, are we?

21 A. That is correct.

22 Q. Okay. Secondly, you would agree with me
23 that the core group are not the same parties in every
24 case?

25 A. They are not -- not the same parties, but

1 often they represent a similar type of party.
 2 There's typically antipoverty money and there's
 3 frequently two industry organizations are -- one or
 4 the other is a beneficiary and frequently there is a
 5 major municipality involved.

6 Q. And this is based on --

7 A. So it's kind of a recipe.

8 Q. And this is based on the four cases that
 9 you reference in your testimony, the three ESPs and
 10 this case, correct?

11 A. Correct.

12 Q. You haven't done an overall evaluation of
 13 all Commission settlements and what parties sign or
 14 don't sign; is that correct?

15 A. That's correct.

16 Q. And you are aware, however, that the
 17 parties that participate in Commission proceedings
 18 are frequently on opposite sides, correct?

19 A. I can't testify as to what the fraction
 20 is.

21 Q. Okay. Fair enough. In the ESP
 22 proceedings that you have referenced, you do know
 23 that parties to the current settlement oppose the
 24 settlement in that proceeding.

25 A. That's correct.

1 Q. Let's turn to page 24 of your testimony.

2 A. Switch my glasses again. Excuse me.

3 Which page?

4 Q. 24. Here on page 24 you talk about that
5 it's difficult for stakeholders to achieve
6 representation before the Commission; is that
7 correct?

8 A. What line?

9 Q. I believe it's on the bot -- starting on
10 line 19.

11 A. Thank you.

12 Q. You talk about it's impossible for many
13 stakeholders to participate in the PUCO process and
14 obtain representation; is that correct?

15 A. I could read the paragraph starting at
16 line 19, "Redistributive coalitions are another
17 example of market abuse."

18 Q. Dr. Hill, I don't need you to read the
19 testimony. I was asking if you believe that it's
20 difficult for some stakeholders to be represented and
21 participate in the Commission process.

22 A. I will have to repeat what I say in part
23 of my testimony.

24 Q. Okay. We'll just let your testimony
25 stand then. You are here today testifying on behalf

1 of OCC; is that correct?

2 A. That's correct.

3 Q. And who does OCC represent?

4 A. Residential customers.

5 Q. And on page 12 of your testimony of line
6 10, you reference there are three state-wide
7 organizations that represent large industrial
8 customers that don't -- isn't it true that those
9 three organizations may also represent or do also
10 represent small- and medium-sized businesses?

11 A. Well, actually I'm not -- I am quoting
12 Schroder's testimony at that point. That's not my
13 language.

14 Q. Fair enough. It's your understanding
15 that the three large organizations that I believe you
16 are referencing here through Schroder's testimony,
17 it's your understanding that they also represent
18 small- and medium-sized businesses?

19 A. I'm aware that one of them does.

20 Q. Okay. You do believe that consumers
21 should have the benefit of participating in advocacy
22 groups, correct?

23 A. I do believe that -- yeah, that's
24 correct.

25 Q. It's your understanding that Staff is

1 involved in the process from the very beginning, the
2 settlement process from the very beginning, correct?

3 A. You broke up with Staff, so could you
4 please repeat?

5 Q. Excuse me. I lost my voice, I think.
6 It's your understanding that Staff is involved from
7 the very beginning of the settlement process,
8 correct?

9 A. That's correct.

10 Q. And you stated that you were not involved
11 in the settlement process in this case; is that
12 correct?

13 A. That's correct.

14 Q. Okay. And you don't know at -- so you
15 don't know at which point in time in the settlement
16 process that Staff signaled its intent to join as a
17 signatory party, do you?

18 A. I believe I answered that with -- for
19 Attorney Hollon. The answer is correct.

20 Q. And you could agree with me it is
21 appropriate for a party to intervene in PUCO
22 proceedings to protect their interests so that it is
23 not made worse by a utility's application?

24 A. That's correct.

25 Q. You also believe that it would be okay if

1 a customer group such as OCC who represents
2 residential customers would be able to intervene to
3 get a lower rate increase in an application for an
4 increase in rates?

5 A. It depends on the facts.

6 Q. Isn't it true --

7 A. I believe that it's appropriate for OCC
8 to intervene to represent the interest of residential
9 consumers, that's correct.

10 Q. And you believe that it's appropriate for
11 Intervenors to be able to challenge the
12 reasonableness of an application or a rate proposed
13 to be charged by a utility, correct?

14 A. Absolutely, correct.

15 Q. And you believe that their participation
16 in a case could result in a more favorable or
17 beneficial outcome or rate, correct?

18 A. I guess I'm tempted to say for who. But
19 the participation of interested parties in an
20 adversarial process is -- is required to reach a
21 conclusion.

22 Q. On pages 6 and 7 of your testimony, you
23 state that this settlement represents a
24 redistributive coalition since it obtains revenues or
25 benefits not earned through market processes. Do you

1 see that?

2 A. Correct.

3 Q. Okay. You are aware that rates for
4 electric distribution service in Ohio are not set
5 through a market process, correct?

6 A. Charges for distribution and transmission
7 are regulated, so they are not set through a market
8 process.

9 Q. And you would also agree with me that
10 utility distribution capital expenditures are not set
11 through market process.

12 A. That's correct.

13 Q. You agree with me under the settlement
14 Dayton Power and Light has committed to implement a
15 customer portal for access to data; is that correct?

16 A. That is correct.

17 Q. And that customer portal will offer
18 third-party access without fees, correct?

19 A. That's what it says.

20 Q. Give me a minute. You changed your
21 testimony. Isn't it true that under the settlement
22 Dayton Power and Light will not pass on the customer
23 information system costs through the IIR?

24 A. That's correct.

25 Q. On page 21, line 16, you make a statement

1 that those not part of the redistributive coalition
2 get higher utility bills. Do you see that?

3 A. I do.

4 Q. Isn't it true that all customers will get
5 higher utility bills as a result of Dayton Power and
6 Light's implementation of the Smart Grid proposal?

7 A. That is -- that is correct.

8 Q. On page 24 of your testimony, you note
9 that increased costs affect the entire supply chain.
10 That's line 11. Do you see that?

11 A. That is correct. I guess I said -- yes,
12 I see it.

13 Q. You would agree with me that direct costs
14 to commercial and industrial customers result in
15 indirect costs to residential customers.

16 A. To -- what was -- what industrial
17 customers and residential customers you say?

18 Q. You would agree that direct costs to
19 commercial and industrial customers result in
20 indirect costs to residential customers through the
21 supply chain.

22 A. Not -- not through the supply chain.
23 It -- it creates indirect costs because of the
24 redistributive effect in which -- the way in which
25 the redistribution takes place.

1 Q. But you would agree with me that
2 increased costs affect the supply chain, correct?

3 A. Increased costs affect the
4 competitiveness of the customer.

5 Q. And -- oh, I'm sorry.

6 A. And as -- as a result, it will affect the
7 business of other companies that supply parts and
8 services to that customer.

9 Q. And if a business receives an increase in
10 its costs for energy, for example, it will in turn
11 likely have to pass on those costs to customers that
12 purchase this product --

13 A. Correct.

14 Q. -- correct? Similarly, if a commercial
15 customer gets a reduction in its costs, it may pass
16 on those costs to those that purchase its products
17 through lower cost of products, right?

18 A. I think you meant savings, in which case
19 the answer is correct.

20 Q. Thank you. And isn't it true that the
21 settlement states that Dayton Power and Light's Smart
22 Grid proposal expenses and the IIR shall be subject
23 to annual audits?

24 A. It states that.

25 Q. And that would be a benefit to customers,

1 correct, as opposed to no audits?

2 A. I am having a House Bill 6 problem with
3 that statement. It's easy to say that audits will be
4 performed. It's difficult to say at -- whether they
5 are arm's length or not. In this case as long as the
6 audit wasn't captive by DP&L, there -- it improves
7 the probability.

8 Q. Fair enough. A correctly implemented or
9 conducted audit should be a benefit to customers,
10 fair?

11 A. That -- that's a fair statement.

12 Q. The settlement requires Dayton Power and
13 Light to provide time-of-use rates on an opt-in basis
14 to customers, correct?

15 A. That lies outside the scope of my
16 testimony but I recall it being in there somewhere.

17 Q. Let's turn to pages 12, 13. If you look
18 starting on line 20 over to page 13. Here you claim
19 that the parties to the settlement did not attempt to
20 secure benefits for other similarly situated
21 entities. Do you see that?

22 A. You are talking about starting with line
23 20?

24 Q. On page 12 going over to page 13.

25 A. Page 12, line 20, I write "The business,

1 commercial, and governmental signatories do not
2 attempt to secure benefits through the PUCO process
3 for other similarly situated entities."

4 Q. And that's because you believe that the
5 benefits of the settlement only apply to the
6 signatory parties, correct?

7 A. I believe that the benefits that have
8 been extracted through the targeted benefits for the
9 signatory parties are only applied to them. So there
10 is only one -- there is only one university. There
11 is only one city. There is only one grocery store.
12 There are approximately 67 companies. And that's it.

13 Q. So as I understand your theory, if in the
14 settlement there were provisions that give benefits
15 to residential customers as a whole or that provide
16 benefits to small and large businesses as a whole,
17 that would be okay and there would be no
18 redistributive coalition, correct?

19 A. Not correct. There would still be
20 redistribution underway. It is just that it is a --
21 it makes the equity that's -- it allows the result to
22 be closer to the regulatory principle of equity.

23 Q. You are aware that there are terms of the
24 settlement that benefit all customers, right?

25 A. There is an assertion in the Stipulation

1 that there are benefits to all customers.

2 Q. Okay. Well, let's actually look at
3 the --

4 A. That is not part of my testimony.

5 Q. Let's take a look at the settlement.
6 Okay. Page 18, Provision 9a, it's true here that any
7 customer -- so all customers will be able to purchase
8 a small thermostat and receive a rebate; is that
9 correct?

10 MR. HEALEY: I am going to object, your
11 Honor, as Mr. -- as Dr. Hill explained, this is
12 outside the context of his testimony. This is a
13 Smart Grid issue. His testimony doesn't say anything
14 at all about benefits or costs of Smart Grid and
15 whether he has any expert opinion on whether Smart
16 Grid is or is not a benefit so asking his opinion on
17 whether this is a benefit would not be relevant and
18 is outside the scope of his stated expertise.

19 EXAMINER WILLIAMS: I am going to
20 overrule the objection. I am going to overrule the
21 objection. The testimony is clearly aimed at the
22 impact of the redistributive coalition and whether
23 there are benefits beyond that, so we will allow the
24 question.

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

1 apologize. You are a little garbled now as well, so
2 I apologize. I didn't hear you speaking.

3 EXAMINER WILLIAMS: You didn't hear any
4 of that?

5 MS. BOJKO: No, I did. I just wanted to
6 explain why I didn't mean to jump on top of your
7 voice.

8 EXAMINER WILLIAMS: Okay.

9 THE WITNESS: Excuse me. Your Honor, for
10 me it came in very garbled, so I don't have a clue as
11 to what you said. That could be my hearing aids too.
12 It's not necessarily you.

13 EXAMINER WILLIAMS: It wasn't just you,
14 so the point being I overruled the objection. I am
15 going to allow the line of questioning as to benefits
16 beyond the redistributive coalition.

17 THE WITNESS: Thank you.

18 Q. (By Ms. Bojko) Okay. So we are on page
19 18, and the question that I actually posed to you was
20 different than what your counsel said. The question
21 I posed to you was isn't it true that the provision
22 in 9a is available to all customers, not just
23 signatory parties?

24 A. That's correct.

25 Q. Could you turn to page 22 of the

1 Stipulation, please. Provision 11a, "Customer Data
2 Access," isn't it true that this provision
3 provides -- it applies to all customers including
4 those that are not signatory parties?

5 A. I can't answer that question. I don't
6 know.

7 Q. Well, isn't it true it says it shall
8 provide the customer with access to the CIS system?
9 It does not limit the customer to a signatory party
10 customer?

11 A. That -- that is correct.

12 Q. And if you look at page 23, Section b,
13 isn't it true that this provision applies to all
14 CRESs and third party providers, not just the
15 suppliers that signed the settlement?

16 A. In order to answer that, I would have to
17 read through to page 26.

18 Q. Okay. Well, let's shorten it a little
19 bit. If you look at bii, doesn't it say for use by
20 any authorized CRES or third party on a
21 nondiscriminatory basis?

22 A. That's correct, it does.

23 Q. And if you turn to page 28, Provision ci,
24 isn't it true that this provision requires Dayton to
25 upgrade its system and processes for wholesale market

1 settlements and provide network service peak load
2 information values to each customer, so every
3 customer?

4 A. Instead of relying on generic load
5 profiles? It does. I don't see -- when I look at --
6 at a number of these, I see them as customer
7 benefits, but I see them as being primarily in the
8 best interests of the lead -- the lead signatory in
9 this Stipulation which is the DP&L. This is in their
10 own best interest.

11 Q. Well, you don't believe customers having
12 access to their data is in the customer's best
13 interest?

14 A. I believe it's in their interest. It's
15 also in the company's interest.

16 Q. And isn't it true that the interests in
17 here that are for the benefit of all were negotiated
18 by the signatory parties?

19 A. You broke up on that one.

20 Q. Isn't it true that the provisions in here
21 that benefit all customers or all CRES providers, all
22 suppliers, all third parties were negotiated by the
23 signatory parties?

24 MR. HEALEY: Objection.

25 EXAMINER WILLIAMS: Basis?

1 MR. HEALEY: Your Honor, the signatory
2 parties may have signed the settlement, but Ms. Bojko
3 is asking him to speculate as to who negotiated
4 individual terms of that settlement and that would be
5 part of the confidential settlement communications.
6 Further, obviously it would require him to speculate,
7 but more importantly she is asking him to opine on
8 whether a particular signatory negotiated individual
9 pieces of settlement, and the Commission does not
10 allow that type of testimony.

11 EXAMINER WILLIAMS: Okay. Ms. Bojko,
12 would you rephrase.

13 MS. BOJKO: Sorry. I was not trying to
14 elicit that information, your Honor.

15 Q. (By Ms. Bojko) Let's look at a couple
16 more, Dr. Hill. Look at page 29, Provision e. Isn't
17 it true that the settlement provides that no fees
18 shall be charged by Dayton to all CRESSs and third
19 parties associated with accessing data?

20 A. It says that.

21 Q. One -- let's go to --

22 A. One of the difficulties I am having in
23 this line of questioning is one of the signatory
24 parties is the Staff of the Commission. And one of
25 the roles -- and primary role of the Staff of the

Commission is to work in the best interests of all Ohioans to include things such as a number of these benefits.

So I can't -- while it's indeed true there are CRES providers beyond those that signed, I also don't know -- I don't -- I can't tell you which of these attributes of the Stipulation came from the Staff of the PUCO and which did not.

MS. BOJKO: Your Honor, I move to strike everything after he answered my question which was does the provision on page 29 state that no fees shall be charged to all CRES and third parties?

EXAMINER WILLIAMS: To the extent you are asking him his understanding of the Stipulation and the terms therein, he is allowed to explain his answer. I will let the record stand.

Q. (By Ms. Bojko) We will get back to that, Dr. Hill, about the Staff. You would agree with me that there are benefits included in this settlement that benefit both signatory parties as well as their competitors.

A. We actually have to go through that piece by piece for the carve-out benefits that were directly received by the signatory parties leaving out the PUCO Staff. So, for example, there are a set

1 of benefits that go to seven hospitals, not to every
2 hospital in the jurisdiction. And we can go through
3 that whole list. You know where I am heading there.

4 Q. Sure. Let's go through the list because
5 I think your testimony is trying to say that
6 customers didn't negotiate or signatory parties
7 didn't negotiate for benefits -- well, let me just
8 ask, you are not trying to say signatory parties did
9 not negotiate benefits that apply to all of those
10 entities in their class, are you?

11 A. What I am testifying to is, I believe, a
12 revealed preference and I look at what -- what is in
13 the settlement and I see unequal treatment being
14 given to competitors or to similar organizations.

15 Q. Okay. Well, let's go back to the Stip
16 then because the provisions I am reading are not
17 applicable to signatory parties. So look at page 30.
18 Page 30, Provision B, this provision applies towards
19 the marketing and education for all residential
20 customers; is that correct?

21 A. The Stipulation is \$50,000 to the
22 customer education expenditures will be applied
23 toward marketing and education for residential
24 customers about the use of the smart thermostat
25 rebate program. I look at it as a marketing expense

1 to establish a market for smart thermostats.

2 Q. But all customers will have access to
3 that information and materials; is that correct? All
4 residential, excuse me.

5 MR. HEALEY: Objection.

6 EXAMINER WILLIAMS: Basis?

7 MR. HEALEY: That calls for him to
8 speculate who might or might not see this marketing.
9 We don't know whether this marketing will be targeted
10 to particular individuals or not so that would
11 require Dr. Hill to speculate as to who it will be
12 marketed toward.

13 EXAMINER WILLIAMS: By the terms of the
14 phrase deals with marketing education for residential
15 customers, so I am going to let the question stand.

16 A. So the --

17 MS. BOJKO: I didn't hear. I'm sorry, I
18 didn't hear you, your Honor.

19 EXAMINER WILLIAMS: Yeah, that's a
20 problem. I can't be heard. I will crank up the
21 volume. I overruled the objection finding that the
22 paragraph b on page 30 specifically talks toward
23 marketing and education for residential customers, so
24 the question stands.

25 A. Can you repeat the question, please?

1 Q. Sure. And I will try to address
2 Mr. Healey's objection while I do that. Isn't it
3 true that the settlement makes available to all
4 residential customers the marketing and education
5 information set forth in that paragraph?

6 A. That is correct. But the primary
7 beneficiary of that marketing is DP&L and the Smart
8 Grid coalition.

9 Q. That's your inference, correct?

10 A. That's correct.

11 Q. Okay. So, right now, I am trying to look
12 at that provision so let's go down to c and c is a
13 water heater controlled pilot and that pilot is
14 available to all residential customer accounts
15 within -- excuse me, customer accounts within
16 Dayton's city limits, correct?

17 A. That is correct. But it's not -- but
18 it's not available to customers in Trotwood, and it
19 is designed actually as a nice experiment, but it
20 is -- it is very narrowly targeted.

21 Q. Okay. Let's go to paragraph 30 -- or
22 page 32, paragraph e. Isn't it true that this
23 limitation on how Dayton can and cannot use its AMI
24 is for all residential customers? This is a benefit
25 for all residential customers, correct?

1 A. I don't understand the sentence, so I
2 can't respond.

3 Q. Okay. You mean you don't understand what
4 the AMI -- whether this sentence is limiting whether
5 customers can be disconnected or reconnected through
6 the AMI process?

7 A. That's correct.

8 EXAMINER WILLIAMS: Ms. Bojko, can you
9 hear me?

10 MS. BOJKO: Yes.

11 EXAMINER WILLIAMS: My sound improved
12 there. I did unplug and replug. It sounds like I am
13 a little bit more audible. We are at 12:45, 12:47.
14 Get some idea as to how much longer you expect to go
15 so I can plan the rest of our time together leading
16 into your confidential session.

17 MS. BOJKO: Sure, your Honor. I think I
18 should be done in about 15, 20 minutes.

19 EXAMINER WILLIAMS: And then if I -- are
20 we off record, Karen? Let's take us off record,
21 please.

22 (Discussion off the record.)

23 EXAMINER WILLIAMS: We will go ahead and
24 go on the record and proceed with cross, Ms. Bojko.

25 MS. BOJKO: Thank you, your Honor.

1 Q. (By Ms. Bojko) Dr. Hill, isn't it true
2 that the settlement lowers the total costs of the
3 Smart Grid proposal that will be recovered from
4 customers by 600 million than that which was
5 proposed?

6 A. I can't testify to that fact.

7 Q. Do you know that the original cost to
8 customers under the application was \$850 million?

9 A. I'm not aware of that fact.

10 Q. And you don't know how the Stipulation
11 modified and what the current cost to customers is,
12 do you?

13 A. Correct.

14 Q. If the settlement did, in fact, lower the
15 costs that are passed onto customers through the IIR,
16 you would agree with me that would be a benefit to
17 all customers, correct?

18 A. I would agree that there could be a
19 benefit to customers. The argument and the point of
20 my testimony is not -- is not about anything outside
21 of the very specific narrow benefit that the
22 redistributive coalition got for itself.

23 Q. And, sir, it's your understanding that
24 customers will only be responsible for paying the
25 costs associated with the settlement that are

1 approved by the Commission.

2 A. Can you repeat that one?

3 Q. Sure. It's your understanding that
4 customers will only be charged for or responsible for
5 costs that are actually approved by the Commission.

6 A. Yeah, that's correct.

7 Q. Okay. And it would be a benefit to all
8 customers including nonsignatory parties if the rate
9 impact was lowered as a result of the settlement,
10 correct?

11 A. That's correct.

12 MS. BOJKO: Your Honor, I have no further
13 questions. Thank you.

14 Thank you, Dr. Hill, for your time this
15 morning and this afternoon.

16 THE WITNESS: You are welcome, Ms. Bojko.

17 EXAMINER WILLIAMS: Thank you, Ms. Bojko.

18 Ms. Whitfield, did you have questions on
19 behalf of Kroger?

20 MS. WHITFIELD: Yes, thank you, your
21 Honor.

22 - - -

23 CROSS-EXAMINATION

24 By Ms. Whitfield:

25 Q. Good afternoon, Dr. Hill. My name is

1 Angie Whitfield, and I represent The Kroger Company.
 2 I just have a few follow-up questions for you. If
 3 you could please turn to page 10 of your testimony.
 4 At lines 4 and 7 --

5 A. Give me a chance here.

6 Q. No problem.

7 A. I am getting slower as the sun is
 8 starting to set behind me. And I have to change my
 9 glasses.

10 Okay. I'm all yours.

11 Q. Okay. At lines 4 through 7, you testify
 12 that signatory parties intervene in PUCO proceedings
 13 so that money paid to a utility by other customers
 14 can be redistributed to them. Do you see that?

15 A. On line 5.

16 Q. Yes. Is that your testimony?

17 A. That's my testimony.

18 Q. Okay. And if I understand your testimony
 19 earlier in response to Ms. Bojko, you didn't
 20 interview any of the signatory parties in this case
 21 about their motivation or intention in intervening in
 22 this proceeding, did you?

23 A. I did not.

24 Q. And you haven't talked with anybody from
 25 Kroger as to why it made the decision to intervene

1 and participate in this proceeding, did you?

2 A. I did not.

3 Q. And you didn't do an analysis of the cost
4 impact that DP&L's application would have on Kroger,
5 did you?

6 A. I did not.

7 Q. So sitting here today you don't have any
8 specific information from Kroger or any of the other
9 signatory parties to the Stipulation to support your
10 representation in your testimony as to their
11 motivation or intention in intervening, do you?

12 A. I have the data that's revealed in the
13 Stipulation by the direct benefit that they received
14 by participating as part of the redistributive
15 coalition.

16 Q. But you don't know what their motive or
17 intentions were when they made the decision to
18 intervene, do you?

19 A. That's correct.

20 Q. If I could have you turn to page 11 of
21 your testimony. On line 6 and 7, you testify that
22 "Those who don't have the sophistication, funding, or
23 awareness of the PUCO's process are left out." Do
24 you see that?

25 A. Starting up on line 4 I said "In other

1 words, the redistributive coalition is open to all
2 parties that have knowledge about the opportunity to
3 intervene and have access to lawyers who regularly
4 practice before the PUCO. Those who don't have the
5 sophistication, funding, or awareness of the PUCO --
6 of the PUCO's processes are left out," correct.

7 Q. And it's a utility's choice whether or
8 not to participate in a PUCO proceeding?

9 A. There is choice but there's also the
10 issue of knowledge and -- and I'll leave it at that
11 point.

12 Q. And you aren't aware of any grocery
13 stores that were prohibited from intervening and
14 participating in this proceeding, are you?

15 A. There was no grocery store that was
16 prohibited.

17 Q. And just to close that loop, you didn't
18 speak with any grocery stores to determine why they
19 chose not to participate in this proceeding, did you?

20 A. That's correct.

21 Q. And then if you would turn to page 13 of
22 your testimony.

23 A. I'm there.

24 Q. You reference in lines 10 through 16
25 "benefits for a particular supermarket" that you

1 claim are paid for by customers. Do you see that?

2 A. Are you on page 13?

3 Q. Yes, page 13 of your testimony, lines 12
4 through 16, your answer to question 12.

5 A. What I said is "Benefits for a particular
6 supermarket do not flow to its competitors." I did
7 write that.

8 Q. And then later on in that paragraph you
9 reference that "the state of Ohio is showing
10 preference for one grocery store over another,"
11 right?

12 A. That is correct.

13 Q. And I think in your deposition you called
14 that obnoxious as Mr. Long pointed out, correct?

15 A. That is correct.

16 Q. And just so we are clear, you are talking
17 about my client Kroger, are you not?

18 A. I am talking about Kroger in that case.

19 Q. Now, you would agree with me that the
20 state of Ohio did not ask or invite Kroger to
21 intervene or participate in this proceeding, did it?

22 A. It did not.

23 Q. And you have no evidence that the PUCO
24 itself invited or asked Kroger to intervene and
25 participate in this proceeding, correct?

1 A. That is correct.

2 Q. And the same question with respect to
3 DP&L, that they reached out and asked Kroger to
4 intervene and participate?

5 A. I have no idea.

6 Q. And you would agree that interested
7 parties can monitor the PUCO docketing system for
8 proceedings that might affect them, right?

9 A. If they are sophisticated enough.

10 Q. I believe in response to Mr. Hollon's
11 questions you acknowledged that it's public records
12 and open to the public, correct?

13 A. Absolutely, correct.

14 Q. And are you aware that there is daily
15 activity reports issued by the PUCO that can be
16 signed up for?

17 A. I am not aware of that.

18 Q. Do you know whether Kroger monitors the
19 PUCO docketing system?

20 A. I do not.

21 Q. Do you know whether any other grocery
22 store or supermarket does that type of monitoring.

23 A. I do not.

24 Q. You are aware, are you not, that Kroger
25 regularly intervenes in electric utility cases before

1 the PUCO?

2 A. I am.

3 Q. Okay. And are you aware that another
4 store that sells groceries, Wal-mart, regularly
5 participates in PUCO proceedings?

6 A. That's correct.

7 Q. So did you -- do you know why Wal-mart
8 chose formally not to participate in this proceeding?

9 MR. HEALEY: Objection.

10 EXAMINER WILLIAMS: Can you rephrase?

11 Q. (By Ms. Whitfield) You have no knowledge
12 as to why Wal-mart or any other supermarket would
13 choose not to participate in this proceeding, do you?

14 A. I'm confused by the question, but maybe I
15 can make -- I have no idea why any other grocery
16 store did not participate in the proceedings.

17 Q. Are you aware that Kroger maintains its
18 corporate headquarters here in the state of Ohio?

19 A. In Cincinnati.

20 Q. And you can't identify any other national
21 grocery store chain or supermarket chain that
22 maintains its corporate headquarters in Ohio, can
23 you?

24 A. Not nationally. Regionally, yes.

25 Q. And are you aware that Kroger employs

1 over 40,000 employees at over 200 facilities in the
2 state of Ohio?

3 A. Actually I am.

4 Q. Now, it's your understanding that Kroger
5 obviously participated in the settlement negotiations
6 resulting in this Stipulation, right?

7 A. Can you repeat?

8 Q. It's your understanding that Kroger
9 participated in the settlement negotiations resulting
10 in the Stipulation in this proceeding?

11 A. Correct.

12 Q. I believe you testified to this before,
13 but just for clarification, you agree that it's not
14 the PUCO's burden to invite grocery stores or other
15 entities to participate in proceedings before it,
16 right?

17 A. I know that it's not the practice of the
18 PUCO to do anything other than post its legal notice.
19 But I believe if there is the principle of regulatory
20 equity, that if an award is -- a reward is being
21 given to one firm, that a positive attempt to bring
22 in competitor firms is reasonable, particularly if
23 they don't have the same degree of sophistication.

24 MS. WHITFIELD: Your Honor, I would move
25 to strike everything in his answer after he said it's

1 not the practice of the PUCO.

2 EXAMINER WILLIAMS: Yeah. Karen, could
3 you read the question back, please.

4 (Record read.)

5 EXAMINER WILLIAMS: To the extent the
6 question is asked regarding whether it's the
7 Commission's burden or not, I think he is entitled to
8 explain his professional opinion what the
9 Commission's response is in regard to these cases.
10 We will let the answer stand.

11 MS. WHITFIELD: Thank you, your Honor.

12 Q. (By Ms. Whitfield) Dr. Hill, does the
13 PUCO have the legal obligation or requirement under
14 the law to proactively go out and invite entities to
15 participate in proceedings before it?

16 A. I cannot answer that with authority.

17 Q. You do not believe that Kroger has the
18 burden to go out and notify and invite other grocery
19 stores to participate in proceedings pending before
20 the PUCO, do you?

21 A. The answer to that is no. It's up to the
22 PUCO to ensure equity of access.

23 Q. But isn't it true that under your theory
24 of a redistributive coalition for the state of Ohio
25 to avoid showing preference for one grocery store

1 over another, as you accuse here, the PUCO would have
2 to ensure all affected grocery stores participate in
3 each and every proceeding, right?

4 A. Correct. Well, at least have affirmative
5 invitation to do so.

6 Q. And aren't you advocating here that then
7 Kroger should fit the bill for participating in these
8 types of proceedings on behalf of all grocery stores
9 in the state of Ohio?

10 A. That's correct, that they -- that if we
11 respond to the comment and the expectation the
12 signatory parties represent others in its class that
13 has to be lived up to. And that's the statement
14 of -- in Schroder's testimony that these
15 organizations represent others, that's -- that is
16 hugely important. So if you go to page 12 of my
17 testimony, lines 2 and 3, the critical sentence in
18 the DP&L settlement is at the end of the first
19 paragraph on the second page, the Stipulation --
20 "This Stipulation accommodates the diverse interests
21 represented" the important emphasis of the word is
22 mine, "by the Signatory Parties and is entitled to
23 careful consideration by the Commission." So the
24 question is who do they represent? Now, my argument
25 is that Kroger represents Kroger, and it shouldn't

1 represent anyone other than Kroger.

2 Q. Okay. But you -- you are requiring
3 Kroger to represent all other grocery stores and to
4 pay the expense for that representation under your
5 theory in this case, are you not?

6 A. That -- that or change the process and
7 the way in which we move from a settlement based -- a
8 negotiating settlement based between identified
9 interested parties to a system where the trial -- the
10 trial judge is taking testimony on impact, and the
11 PUCO then applies the ruling.

12 So we move from a settlement to actually
13 something that's closer to law making. It's my
14 argument in this entire testimony that the
15 redistributive coalition is rational self-interest on
16 the part of the participants. Some of the benefits
17 have great social benefit, some marginal. But
18 because the carve-outs or the benefits awarded to
19 our -- are to small groups, not to the entire class,
20 they are inherently discriminatory.

21 And the way the group redistributive
22 coalition works, they are taking funds or money from
23 the broad rate base and targeting it to those parties
24 that are sophisticated enough and have the ability to
25 participate for their own benefit.

1 MS. WHITFIELD: Your Honor, I am going to
2 move to strike all of his testimony after his first
3 sentence what he just went through which is a
4 recitation of his testimony he can certainly do on
5 redirect with Mr. Healey if that is their
6 determination to do.

7 EXAMINER WILLIAMS: I am going to let the
8 answer stand, although I will caution we've heard
9 similar recitations with some frequency of late, so
10 if you could try to restrict your response to the
11 question being asked. To the extent the response is
12 drifting from that, if you could go ahead, stop it at
13 the paragraph, it might be more efficient.

14 THE WITNESS: I appreciate that, your
15 Honor.

16 MS. WHITFIELD: Thank you, your Honor.

17 Q. (By Ms. Whitfield) And, Dr. Hill, in your
18 testimony you are not advocating or recommending any
19 type of process in which other grocery stores or
20 entities would reimburse Kroger for its costs and
21 expenses and resources dedicated to participating in
22 these PUCO proceedings, are you?

23 A. No. That's beyond the scope.

24 Q. Okay. And I believe you acknowledged in
25 your testimony in response to Mr. Long's questioning

1 that that would create a free rider problem, would it
2 not?

3 A. That's correct.

4 Q. And let's assume we have a fully
5 uncontested settlement in this case, okay? You have
6 to answer.

7 A. Oh, yes.

8 Q. Okay. And that OCC has joined the
9 settlement and even gotten a few specific benefits,
10 additional benefits for residential customers, okay?

11 A. Correct. Okay.

12 Q. In that hypothetical under your theory, I
13 believe you've testified that that could still be
14 possible to be a redistributive coalition, could it
15 not?

16 A. More than possible, absolutely would be
17 because there would be discrimination among the
18 benefits of the classes allegedly represented by some
19 of the signatory parties.

20 Q. In your testimony you reference that you
21 have provided testimony -- you've testified
22 previously before the PUCO on the theory of
23 redistributive coalitions, correct?

24 A. That's correct.

25 Q. And in those cases the PUCO rejected your

1 theory, did they not?

2 A. I have no idea.

3 Q. Well, do you know whether the PUCO
4 rejected the Stipulations in those cases on the
5 grounds of a redistributive coalition?

6 A. I have no idea.

7 MS. WHITFIELD: That's all the questions
8 I have, your Honor.

9 Thank you, Dr. Hill.

10 THE WITNESS: You are welcome.

11 EXAMINER WILLIAMS: Thank you,
12 Ms. Whitfield.

13 I don't believe anybody else had
14 expressed an interest in cross, but I will look to
15 see if anybody has anything further in light of
16 what's occurred.

17 Seeing no motion toward any cameras, so
18 with that, Mr. Healey, do you need a minute or two
19 before you contemplate redirect?

20 MR. HEALEY: Yeah. Can we take 5 off the
21 record, please?

22 EXAMINER WILLIAMS: Sure. We will come
23 back at 1:22. We are off the record.

24 (Recess taken.)

25 EXAMINER WILLIAMS: Karen, we will go

1 back on the record.

2 Mr. Healey, any redirect?

3 MR. HEALEY: Yes, your Honor.

4 EXAMINER WILLIAMS: Please proceed.

5 - - -

6 REDIRECT EXAMINATION

7 By Mr. Healey:

8 Q. Dr. Hill, you will have to take yourself
9 off mute. There we go. Dr. Hill, do you recall
10 earlier today during your cross-examination you
11 mentioned your -- the polar vortex in the context of
12 the RSC. Do you recall that?

13 A. I do.

14 Q. And did you mean polar vortex, or did you
15 mean something else?

16 A. I meant provider -- I should have said
17 provider of last resort, so I did not mean polar
18 vortex.

19 Q. Thank you. Dr. Hill, do you recall a
20 line of questioning during Ms. Bojko's
21 cross-examination about the -- what she believed were
22 benefits in the Stipulation to all parties?

23 A. I do.

24 Q. And I would like to know assuming she's
25 right and there are some benefits to all parties in

1 the Stipulation, does that change your expert opinion
2 regarding the redistributive coalition?

3 A. No, no. In fact, it's irrelevant. My
4 testimony about the redistributive coalition is that
5 there's private entities that signed onto the
6 Stipulation, entered negotiations, received
7 carve-outs, member benefits, or cash to their
8 organizations that were not available to similar
9 competing organizations or companies and businesses
10 that were not part of their businesses.

11 So no matter what happens you still have
12 about 10 percent of our -- of the cash equivalent of
13 RSC that's being directed to some companies and not
14 to another. Just a little quick addition shows if
15 you add up all of the economic development incentives
16 that were provided in the Stipulation, it affects
17 somewhere between 60 and 70 companies. I come up
18 with 67 who benefit but there are more than 7
19 hospitals in DP&L's territories. We can go on and
20 the result is discriminatory and it -- it -- the cash
21 benefits inflict costs upon the general rate paying
22 public directly or indirectly.

23 MR. HEALEY: Thank you, Dr. Hill.

24 Nothing further, your Honor.

25 EXAMINER WILLIAMS: Thank you,

1 Mr. Healey.

2 I will entertain any appropriate recross.

3 Mr. Hollon? you're muted, sir.

4 MR. HOLLON: None for me, your Honor.

5 EXAMINER WILLIAMS: Thank you,

6 Mr. Hollon.

7 Mr. Long?

8 MR. LONG: None for me, your Honor.

9 Thank you.

10 EXAMINER WILLIAMS: Thank you.

11 Ms. Bojko?

12 MS. BOJKO: Yes, your Honor, briefly.

13 - - -

14 RECROSS-EXAMINATION

15 By Ms. Bojko:

16 Q. Dr. Hill, you just referenced the
17 benefits of the settlement not being available to
18 other customer groups that are not signatory parties.
19 Do you recall that?

20 A. Customer groups or individual customers?

21 Q. I think you mentioned both. You
22 mentioned individual customers as well as member
23 organizations.

24 A. Okay. Thank you.

25 Q. Do you recall that? Isn't it true you

1 weren't involved in the settlement so you have no
2 idea what was or was not available to other customer
3 groups or individual customers?

4 A. That's correct.

5 Q. You keep mentioning 60 -- I think one
6 time you said 67. One time you said 60. You keep
7 mentioning 60 some businesses and hospitals that the
8 economic development incentives apply to. Is that
9 what your reference to 67 is?

10 A. That's correct. I didn't go back and sum
11 them up in my spreadsheet. I should have done it
12 before my testimony, but it's in the neighborhood.

13 Q. Isn't it true that many of those 60 some
14 customers that you reference have multiple
15 facilities, and so the benefits could provide much
16 more widely? I think Kroger -- in your questions
17 with Kroger they stated 200 facilities. Isn't it
18 true these benefits could have a much broader
19 application than 67?

20 A. It -- it's doubtful. In fact, I believe
21 the Kroger benefit is a cash amount of \$104,000 over
22 the four years it goes to the company.

23 Q. Okay. Isn't it true that many of the
24 other customer groups have multiple accounts and
25 meters that this could apply to?

1 A. Well, we know that specific customers
2 have multiple meters within their own facility.

3 Q. So this could apply to them; is that
4 correct?

5 A. The language on the transmission opt-out
6 pilot program says that 50 member companies of one or
7 more of the three manufacturing business
8 organizations can receive the discount benefit. It's
9 unclear to me if that's the entire company or if
10 it -- if it's the definition of a customer, 50
11 customers which would be a meter. So I just can't
12 interpret that.

13 When it comes to -- oh, I'm sorry,
14 Kroger. Kroger did get a -- does have a 4/10 of a
15 cent discount on all electricity that's used in
16 the -- in the DP&L footprint, so it's more than the
17 cash benefit. Honda has 4/10s of cent discount for
18 electricity used, and I don't know how many
19 facilities Honda has in the DP&L territory.

20 Q. So again, you keep mentioning a 60
21 number. It's fair after your recitation right there
22 and your reading again of the Stipulation, that the
23 economic incentives and grants that you're referring
24 to has a broader application to more facilities than
25 just 60, correct?

1 A. I should say that it applies between 60
2 and 70 corporate entities including hospitals.

3 Q. And you just agreed with me that the
4 Kroger facility would apply to over -- would -- that
5 economic development incentive for Kroger also has a
6 broader application of to all of its facilities,
7 correct?

8 A. Those that are in DP&L's territory.

9 Q. So the answer is yes.

10 A. Well, I am just clarifying it's within
11 DP&L's territory. Kroger has facilities in Ohio
12 outside of the territory.

13 Q. So it would be whatever number of
14 facilities Kroger has in DP&L's territory.

15 A. That's correct.

16 Q. Okay. And then when you keep mentioning
17 the 60 some facilities that benefit from this
18 settlement, you are not including all of the other
19 benefits in the settlement beyond paragraph 45 --
20 excuse me, 35, Provision 15 regarding economic
21 development.

22 A. In my testimony the different carve-outs
23 are listed, so it goes beyond the economic
24 development incentives.

25 MS. BOJKO: Okay. Thank you. I have no

1 further questions.

2 EXAMINER WILLIAMS: Thank you, Ms. Bojko.
3 Ms. Whitfield?

4 MS. WHITFIELD: No questions, your Honor.
5 Thank you.

6 EXAMINER WILLIAMS: Okay. Mr. Healey,
7 anything you need to address on redirect?

8 MR. HEALEY: Yes, your Honor, very
9 briefly.

10 - - -

11 FURTHER REDIRECT EXAMINATION

12 By Ms. Healey:

13 Q. Dr. Hill, does the fact that Kroger has
14 more than one location in DP&L change the fact that
15 other grocery stores did not get comparable benefits
16 under the settlement?

17 EXAMINER WILLIAMS: Mr. Healey, we are
18 having some connectivity issues. You are going to
19 have to reask your question. You broke up.

20 Q. Sure. Dr. Hill, you heard Ms. --

21 MR. HEALEY: Can you hear me now?

22 EXAMINER WILLIAMS: Yes.

23 A. I got you.

24 Q. (By Mr. Healey) Thank you. Dr. Hill,
25 Ms. Bojko just asked some questions about some of the

1 signatory parties having multiple facilities within
2 DP&L's service territory. Do you recall that line of
3 questioning?

4 A. I do.

5 Q. Does that in any way eliminate or reduce
6 the scope of the redistributive coalition in your
7 opinion?

8 A. It does not.

9 MR. HEALEY: Thank you. Nothing further,
10 your Honor.

11 EXAMINER WILLIAMS: Okay. That should
12 conclude the questioning then. So with that,
13 Dr. Hill, you are excused. Thank you.

14 THE WITNESS: Thank you. Thank you for
15 your patience, your Honor. This has been a pretty
16 tough morning for everybody and afternoon.

17 EXAMINER WILLIAMS: Thank you, Doctor.

18 Mr. Healey, take up your Exhibit.

19 MR. HEALEY: Yes, your Honor. OCC moves
20 for the admission of OCC Exhibit 3.

21 EXAMINER WILLIAMS: Any objection from
22 any of the parties?

23 MR. LONG: No objection, your Honor.

24 MS. BOJKO: Your Honor.

25 EXAMINER WILLIAMS: I heard a lot of no

1 objections. I don't see anybody saying they have an
2 objection so.

3 MS. BOJKO: Your Honor.

4 EXAMINER WILLIAMS: Ms. Bojko.

5 MS. BOJKO: Your Honor, I was actually --
6 I didn't want to speak over Mr. Long. OMAEG objects
7 to the testimony as it relates to our motion to
8 strike.

9 EXAMINER WILLIAMS: Thank you. Over your
10 objection we will admit the testimony.

11 (EXHIBIT ADMITTED INTO EVIDENCE.)

12 EXAMINER WILLIAMS: Thank you. I don't
13 know of any matters we need to address on the record,
14 so we are going to get a little bit of a lunch.
15 Ms. Schabo, yes. Let's go off the record.

16 (Discussion off the record.)

17 EXAMINER WILLIAMS: We are back on.

18 Ms. Schabo.

19 EXAMINER SCHABO: Okay. So we are still
20 on track to start that confidential session at
21 2 o'clock. You should have the e-mail already. The
22 hearing host just notified me that he has sent them
23 out. Please take a look in your inbox. Check your
24 junk mail. If you don't see it there, we need to
25 know. If we have missed someone, we need to resend

1 the e-mails. The e-mail does mention checking in.
 2 If you are feeling confident in your new Webex
 3 ability, feel free to take as much of a break as you
 4 can and join us closer to 2:00.

5 Please talk to your people and take note
 6 who actually logs on. You will be expected to note
 7 who is present on behalf of your organization when
 8 you make your appearance as counsel, so lead counsel
 9 make your appearance, let me know which other
 10 attorneys are on the line. If you are from DP&L, let
 11 me know which of your organizational representatives
 12 are there. I am going to be frantically searching
 13 through 50 order panes trying to make sure the name
 14 and face jive. Any questions about that?

15 Oh, and maybe warn everybody that they
 16 will be expected to be on camera the whole time. All
 17 right?

18 With that I think we are done, so this
 19 public session is done for the day. Once you log
 20 off -- the confidential session will be on a totally
 21 separate Webex event. For those of us in the public
 22 we will reconvene -- reconvene tomorrow at 9:00 a.m.
 23 with Mr. Williams as our first witness.

24 EXAMINER WILLIAMS: Thanks, everybody.

25 EXAMINER SCHABO: We are off the record,

Karen.

(Thereupon, at 1:35 p.m., a lunch recess
was taken.)

- - -

CERTIFICATE

I do hereby certify that the foregoing is
a true and correct transcript of the proceedings
taken by me in this matter on Thursday, January 14,
2021, and carefully compared with my original
stenographic notes.

Karen Sue Gibson, Registered
Merit Reporter.

(KSG-7025)

- - -

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Summary: Transcript Dayton Power and Light, Etc.

Volume 4 electronically filed by Mr. Ken Spencer on behalf of Armstrong & Okey, Inc. and Gibson, Karen Sue Mrs.