

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

- - -

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

- - -

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

- - -

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

- - -

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

- - -

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

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VOLUME V

- - -

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 9:01 a.m. on
15 Friday, January 15, 2021.

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17 VOLUME V

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1 Friday Morning Session,
2 January 15, 2021.

3 - - -

4 EXAMINER SCHABO: Today's Friday,
5 January 15, 2021, and we are here for Day Five of
6 Case No. 18-1875-EL-GRD, et al.

7 This morning we will begin with OCC
8 Witness James Williams.

9 Ms. O'Brien, please proceed.

10 MS. O'BRIEN: Do we need to swear him in?

11 EXAMINER SCHABO: Well, I thought you
12 might introduce him, but yes.

13 MS. O'BRIEN: Okay. That's fine. OCC
14 would like to call Mr. James D. Williams.

15 EXAMINER SCHABO: Thank you.

16 Mr. Williams, if you would raise your
17 right hand.

18 (Witness sworn.)

19 EXAMINER SCHABO: Thank you very much.

20 MS. O'BRIEN: Okay. Your Honor, at this
21 time I would like to mark OCC Exhibit 6 which is the
22 direct testimony of James D. Williams filed on behalf
23 of the Office of the Ohio Consumers' Counsel on
24 December 17, 2020.

25 EXAMINER SCHABO: So marked.

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(EXHIBIT MARKED FOR IDENTIFICATION.)

- - -

JAMES D. WILLIAMS

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

DIRECT EXAMINATION

By Ms. O'Brien:

Q. Okay. Mr. Williams, do you have before
you what's been marked as OCC Exhibit 6?

A. I do.

Q. And is this your direct testimony filed
in this case on December 17, 2020?

A. It is.

Q. And did you prepare this testimony?

A. I did.

Q. Do you have any corrections to make to
your testimony?

A. I have a correction. The correction is
on page 23, line 20, and after the word "investment
period," the next two sentences are -- or partial
sentences should be deleted, that is, and I could
read what should be deleted, will be "IIR rate design
will be eliminated. The Company will be entitled to
recover those prudently incurred AMI and/or Smart
Grid costs net of the Company's capital and

1 operational savings solely due to their investment."

2 EXAMINER WILLIAMS: At the outset we are
3 already having some echo issues. Can we go ahead and
4 put Mr. Williams on the phone?

5 MR. SCHMIDT: Mr. Williams, if you look
6 in your Webex window up at the top left, you will see
7 a menu bar across the top that says "File, Edit,
8 Share, View," and then there's a tab there that says
9 "Audio & Video." If you could --

10 THE WITNESS: Where is this at? So it's
11 under "File"? I have "File, Edit, Share, View," and
12 "Audio & Video."

13 EXAMINER SCHABO: "Audio & Video."

14 THE WITNESS: Okay.

15 EXAMINER SCHABO: We'll go off the
16 record.

17 (Discussion off the record.)

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

20 We went off the record just for a moment
21 to fix an audio problem. Right before we went off
22 the record, Mr. Williams was making a correction to
23 page 23. I will let him finish that correction if he
24 was not.

25 THE WITNESS: I believe I had finished it

1 unless it is not corrected for the record, unless it
2 wasn't done correctly in the record. It should be
3 after the word "investment," everything else in that
4 paragraph should be deleted.

5 EXAMINER SCHABO: Okay. That's what I
6 understood. Thank you.

7 THE WITNESS: Thank you.

8 EXAMINER SCHABO: Back to you,
9 Ms. O'Brien.

10 Q. (By Ms. O'Brien) Do you have any
11 additional corrections?

12 A. No, I do not.

13 Q. Okay. And if I were to ask you the
14 questions in your testimony, would your answers be
15 the same?

16 A. It would.

17 Q. And would your answers -- or are your
18 answers true and accurate to the best of your
19 knowledge?

20 A. Yes, they are.

21 MS. O'BRIEN: Okay. I have no further
22 questions for Mr. Williams at this time and make him
23 available for cross.

24 EXAMINER SCHABO: Thank you, Ms. O'Brien.
25 Mr. Ireland.

1 MR. IRELAND: Thank you, your Honor.

2 MR. WYGONSKI: OMAEG would like to tender
3 a motion to strike the witness.

4 EXAMINER SCHABO: The witness entirely?

5 MR. WYGONSKI: Sorry, portions of the
6 witness's testimony.

7 EXAMINER SCHABO: Okay. Yeah, let's
8 start with -- sorry, Mr. Ireland. I jumped the gun.
9 Let's go ahead and start with your motions to strike,
10 Mr. Wygonski.

11 MR. WYGONSKI: Sure. So we have a motion
12 to strike as legal conclusion for various segments of
13 the testimony. We have on page 9, lines 10 through
14 19, Mr. Williams gives legal opinion that Ohio law
15 does not support allowing the IIR Rider.

16 EXAMINER SCHABO: Hold on. Page 9.

17 MR. WYGONSKI: Lines 10 through 19 in
18 that testimony.

19 EXAMINER SCHABO: And do you have other
20 motions to strike on the same grounds?

21 MR. WYGONSKI: Yes. I have several. I
22 was just going to list those out, if that works,
23 sure.

24 EXAMINER SCHABO: Just slow down just a
25 little bit so I can make sure I am properly marking

1 my testimony.

2 MR. WYGONSKI: Okay.

3 EXAMINER SCHABO: Thank you.

4 MR. WYGONSKI: On page 12, lines 5
5 through 14.

6 EXAMINER SCHABO: And the next?

7 MR. WYGONSKI: That one Mr. Williams
8 gives legal opinion that DP&L implementing the IIR
9 under ESP I is inconsistent with Ohio law.
10 The next is page 15, line 8, through page
11 18, line 7.

12 MR. IRELAND: I'm sorry. So was the one
13 before that on -- Jonathan, on lines 10 through 14 on
14 page 12?

15 MR. WYGONSKI: Page 5, lines 5 -- page
16 12, lines 5 through 14.

17 MR. IRELAND: Okay. Thank you.

18 MR. WYGONSKI: Yes.

19 MS. O'BRIEN: Okay. I'm sorry. What was
20 the next one?

21 MR. WYGONSKI: Page 15, line 8.

22 MS. O'BRIEN: Okay.

23 MR. WYGONSKI: Through page 18, line 7.
24 Again, at this point Mr. Williams is talking about
25 the IIR and gives the opinion that it was not

1 authorized by ESP I.

2 EXAMINER SCHABO: So --

3 MS. O'BRIEN: And is this --

4 EXAMINER SCHABO: -- if I am correct,
5 that is all of answer 10, all of question and answer
6 11.

7 MR. WYGONSKI: Correct.

8 MS. O'BRIEN: So it's through page 18,
9 line 7?

10 MR. WYGONSKI: Correct.

11 Next one is page 25, line 19.

12 MR. WYGONSKI: Page 25, line 19, through
13 page 28, line 14.

14 EXAMINER SCHABO: That's all of answer
15 18.

16 MR. WYGONSKI: Then page 29, line 14,
17 through page 31, line 2.

18 EXAMINER SCHABO: Sorry. Give me that
19 one again.

20 MR. WYGONSKI: Page 29, line 14, through
21 page 31, line 2.

22 EXAMINER SCHABO: So all of answer 20.

23 MR. WYGONSKI: Yes. I have one more.

24 EXAMINER SCHABO: Okay.

25 MR. WYGONSKI: That will be page 31, line

1 7, up through page 32, line 7.

2 EXAMINER SCHABO: So all of question --
3 I'm sorry, all of answer 21.

4 MR. WYGONSKI: Yes, your Honor.

5 EXAMINER SCHABO: So six motions to
6 strike all on the basis that he gives a legal
7 conclusion?

8 MR. WYGONSKI: Yes, your Honor, several
9 spots he gives legal conclusions that certain costs
10 violate past orders, that provisions in the
11 settlement violate an order to end energy efficiency
12 programs, and that compliance in the settlement does
13 not conform with Ohio law, one of the things I
14 mentioned earlier.

15 Several portions, your Honor, of
16 Mr. Williams' testimony constitute improper legal
17 opinions under Rule 702. Mr. Williams is not a
18 lawyer, and his testimony lays no foundation that
19 would otherwise qualify as an expert by his
20 education, knowledge, training, or experience to
21 offer such a legal opinion.

22 OMAEG has identified the above portions
23 as containing improper legal opinions. Given that
24 Mr. Williams has no basis for such opinions, these
25 portions of his testimony should be struck

1 accordingly.

2 EXAMINER SCHABO: Ms. O'Brien.

3 MR. IRELAND: Your Honor, just for
4 purposes of the record, we would join the motion.

5 EXAMINER SCHABO: Okay. Would any other
6 party join the motion before I give the floor to
7 Ms. O'Brien?

8 MS. FLEISHER: Yeah. The Smart
9 Thermostat Coalition, your Honor, particularly with
10 respect to the portion at the bottom of page 30, line
11 18, going onto page 31, line 2.

12 MR. LESSER: Your Honor, the City of
13 Dayton and Honda would join the motion.

14 MS. WHITFIELD: Your Honor, Kroger would
15 join the motion in its entirety as well.

16 MR. LONG: Your Honor, IEU-Ohio will join
17 the motion as well.

18 MS. COHN: Your Honor, OEG would join the
19 motion as well.

20 MS. ALLEN: Your Honor, IGS will join the
21 motion as well.

22 EXAMINER SCHABO: So I have DP&L, Smart
23 Thermostat Coalition, City of Dayton, and Honda
24 Manufacturing of America, Kroger, IEU-Ohio, OEG, and
25 IGS.

1 Ms. O'Brien.

2 MS. O'BRIEN: Yes. I would respectfully
3 request that the Attorney Examiner deny the motions
4 to strike in their entirety. First off, Mr. Williams
5 is testifying as a regulatory expert with respect to
6 the issue as to whether or not the settlement
7 violates regulatory principles and practices
8 throughout this proceeding. The Attorney Examiners
9 have entertained testimony along the same lines from
10 other regulatory experts, all of which who have
11 opined on their -- their view of what regulations
12 require under the law.

13 Mr. Williams is testifying as an expert.
14 He is able -- he is testifying on issues related to
15 the ESP I settlement, what his opinion of that
16 settlement is, and what his opinion is related to the
17 Infrastructure Investment Rider. He is -- his
18 expertise qualifies him to do this as an expert
19 witness.

20 I would also like to add that
21 Mr. Williams' testimony was filed on December 17.
22 Each and every one of these parties could have filed
23 a motion to strike earlier in the proceeding where
24 this could be fully briefed. They did not do that,
25 and they are doing this at this late date to

1 essentially strike his testimony in its entirety.

2 And for that reason I would request that
3 the Attorney Examiners deny all of the motions to
4 strike.

5 EXAMINER SCHABO: Thank you, Ms. O'Brien.
6 We are going to take a -- you know what? I am going
7 to give myself 10 minutes because I have to read all
8 of these portions of the testimony before I can rule
9 on the motion to strike. We are going to go off the
10 record. We will come back on we will say 9:25, and I
11 will give my ruling at that time.

12 (Recess taken.)

13 EXAMINER SCHABO: We'll go back on the
14 record, Karen.

15 We are back on the record. It's 9:27.
16 I'm going to rule on motions to strike.
17 Mr. Wygonski, et al., the six motions to strike will
18 be denied in their entirety. Consistent with our
19 previous rulings, Mr. Williams is testifying in his
20 capacity as a regulatory expert and can provide his
21 personal expert opinions.

22 As to whether the Stipulation violates
23 the Commission's orders in this sphere of regulatory
24 policy, if you would like to challenge those
25 opinions, I certainly welcome you to do so through

1 cross.

2 I will caution, however, that his opinion
3 is just that, it is his opinion, and it should not be
4 argued as anything other than his opinion in any
5 briefing that occurs after our hearing.

6 MS. O'BRIEN: Thank you, your Honor. I'm
7 sorry.

8 MR. WYGONSKI: Thank you, your Honor.

9 EXAMINER SCHABO: Mr. Wygonski, you had
10 indicated you might have some additional motions to
11 strike?

12 MR. WYGONSKI: No. I apologize. All my
13 motions to strike were on the same rationale.

14 EXAMINER SCHABO: Okay. I could have
15 very well misunderstood.

16 MR. WYGONSKI: That's my fault. Thank
17 you.

18 EXAMINER SCHABO: Are there any other
19 motions to strike at this time?

20 Hearing none and seeing no indication
21 that anyone is having audio problems, I will take
22 that as a no, and I will turn that over to
23 Mr. Ireland to begin his cross.

24 MR. IRELAND: Thank you, your Honor.

25 - - -

CROSS-EXAMINATION

By Mr. Ireland:

Q. Good morning, Mr. Williams.

A. Good morning, Mr. Ireland.

Q. Can you -- I can't see you, but can you at least hear me? It sounds like you can.

EXAMINER SCHABO: Can you not see him, Mr. Ireland?

MR. IRELAND: Yes, I see you, but I don't see him.

EXAMINER SCHABO: Okay.

MS. O'BRIEN: I can see Mr. Williams.

EXAMINER SCHABO: We are going to go off the record real quick.

(Discussion off the record.)

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

Mr. Ireland, proceed.

MR. IRELAND: Okay. Thank you, your Honor.

Q. (By Mr. Ireland) Good morning again, Mr. Williams. Are you there?

EXAMINER SCHABO: We'll go back off the record.

(Discussion off the record.)

1 EXAMINER SCHABO: Back on the record.

2 Thank you.

3 MR. IRELAND: All right.

4 Q. (By Mr. Ireland) Mr. Williams, are you
5 there?

6 A. I am here, Mr. Ireland.

7 Q. Okay. Great. Thank you. So you, sir,
8 are an employee of OCC; is that right?

9 A. I am.

10 Q. And you have been for 25 years, right?

11 A. I have.

12 Q. And you are not an attorney, right?

13 A. I am not an attorney -- I am not an
14 attorney.

15 Q. And you are not an expert in the law; is
16 that right?

17 A. No, I am not.

18 Q. And you today are not offering any type
19 of legal opinion; is that correct?

20 A. That is correct. I am offering a policy
21 position.

22 Q. So directing your attention to page 9 of
23 your testimony, do you have that in front of you?

24 A. I'm at page 9.

25 Q. Lines 10 to 11 you say "The PUCO should

1 also reject the settlement because it violates Ohio
2 law." If you are not offering an opinion on Ohio
3 law, then you would agree that the Commission should
4 disregard the words "violates Ohio law"; is that
5 fair?

6 A. I'm offering it purely from a policy
7 standpoint. That, of course, will be determined by
8 the Attorney Examiners and our lawyers.

9 Q. So as I understand it, you've been
10 working for OCC since 1996; is that right?

11 A. Yes. I started in January of 1996.

12 Q. And worked as a compliance specialist for
13 about 10 years; is that right?

14 A. As a compliance specialist and then a
15 manager of compliance staff, I was also managing our
16 call center.

17 Q. Right. And that was up until about 2013?

18 A. Yes.

19 Q. And in 2014, you were promoted to your
20 current position as a utility consumer policy expert;
21 is that right?

22 A. Around that time.

23 Q. Right. And so as a consumer policy
24 expert, you are knowledgeable about public policies
25 that affect the Public Utilities Commission; is that

1 right?

2 A. I am.

3 Q. And that would include Ohio statutes that
4 address policies to be applied by the PUCO?

5 A. Not all statutes, some statutes.

6 Q. Well, one of the statutes is 4905.70
7 which states that the PUCO shall initiate programs
8 that will promote and encourage conservation of
9 energy and a reduction in the growth rate of energy
10 consumption, promote economic efficiencies, and take
11 into large account long-run incremental costs. That
12 would be a pol -- a regulatory policy that you would
13 consider; is that fair?

14 A. It's one -- I did not consider that --
15 that statute in this testimony.

16 Q. Should that -- I'm sorry. I didn't mean
17 to cut you off. I'm sorry.

18 A. I did not consider that statute because I
19 limited my review to the -- this settlement in this
20 case and the issues that were raised within the
21 settlement and that would be the requirements for
22 what should be included in a distribution
23 modernization plan and what was included in the
24 settlement.

25 Q. So putting aside your testimony, would

1 you agree that the Public Utilities Commission of
2 Ohio shall -- should consider that policy in
3 evaluating this settlement?

4 A. I believe that the settlement should be
5 evaluated based upon the requirements for -- that
6 came out of the ESP III for what should be included
7 in a distribution modernization plan. But since DP&L
8 reverted to ESP I, my opinion is that the
9 requirements that were outlined within the settlement
10 for the ESP I is what the Commission needs to
11 consider. And there most of the energy efficiency
12 programs like that I think we would find were -- were
13 to be funded through another rider, not the rider
14 that DP&L is now trying to use to recover these
15 costs.

16 MR. IRELAND: I move to strike the
17 answer, your Honor, as nonresponsive. The question
18 was whether or not the Commission should consider it
19 and not what his testimony is.

20 MS. O'BRIEN: Your Honor, I would just --
21 I would just say that Mr. Williams is explaining his
22 response, and it should be allowed to stand.

23 EXAMINER SCHABO: Karen, would you please
24 reread the question and at least the first couple
25 sentences of the answer.

1 (Record read.)

2 EXAMINER SCHABO: The motion to strike
3 will be granted.

4 Mr. Williams, if you would like the
5 question read back to you, I am happy to do so but if
6 you could answer the question asked.

7 THE WITNESS: Thank you, your Honor.

8 EXAMINER SCHABO: Karen, could we get
9 that question one more time, just the question.

10 (Record read.)

11 A. No, I do not.

12 Q. (By Mr. Ireland) What about the section
13 of the Ohio Revised Code which states that it is the
14 policy of this state to encourage innovation and
15 market access for cost effective supply and
16 demand-side retail electric service including, but
17 not limited to, demand-side management,
18 time-differentiated pricing, waste energy recovery
19 systems, Smart Grid programs, and implementation of
20 advanced metering infrastructure? Is that a policy
21 that should be considered by the Commission in
22 evaluating this settlement?

23 A. Which policy -- what statute are you
24 referring to?

25 Q. 4928.02 (D) .

1 A. Yes. And -- and the statute speaks for
2 itself. The Commission does have a responsibility
3 in -- in effectuating the State's policy in 4928.02.
4 That is one of the policies, cost effective Smart
5 Grid.

6 Q. As well as demand-side management,
7 time-differentiated pricing, and the other elements
8 of that statute, correct?

9 A. Yes, but if I could also explain, those
10 are the requirements for what should be considered as
11 part of the distribution modernization plan would be
12 governed through a settlement was based upon what was
13 to be included in the plan. I hope I am being
14 responsive to you.

15 Q. You are. And if you are not, I'll try to
16 point that out.

17 A. Okay. Thank you.

18 Q. So you've been --

19 A. I meant that more for the Attorney
20 Examiner.

21 Q. You have been involved in this proceeding
22 since the case was first filed; is that right?

23 A. Yes, I -- yes, I have.

24 Q. And part of your work reviewed going back
25 to the original AMI, the one agreed upon in ESP --

1 ESP I; is that right?

2 A. Yes. I have reviewed portions of that
3 plan, specific sections that were relevant to -- to
4 the company's withdrawal.

5 Q. And this case -- this DP&L case is not
6 the first Smart Grid proposal you have reviewed; is
7 that correct?

8 A. It is not.

9 Q. In fact, as mentioned in footnote 1 of
10 your testimony -- testimony, you've been involved in
11 the analysis and evaluation of Smart Grid plans from
12 other Ohio electric utilities; is that right?

13 A. That is correct, Mr. Ireland.

14 Q. You worked with Duke Energy's plan which
15 was approved in about 2008 or 2009?

16 A. Yes.

17 Q. And Ohio Power -- you worked on Ohio
18 Power and FirstEnergy's which were also about the
19 same time period; is that right?

20 A. Yes.

21 Q. And DP&L is the only major electric
22 utility that has not implemented a Smart Grid plan;
23 is that right?

24 A. That is correct.

25 Q. In your --

1 A. But again, there are reasons for that.

2 Q. You believe that your expertise is in the
3 area of the determination of benefits; is that right?

4 A. No. My -- my expertise in this is to
5 evaluate the consumer impact of this settlement, and
6 I am rendering my opinion on the third prong that the
7 Commission considers in determining whether or not to
8 approve the settlement.

9 Q. Right. You're not -- as to the
10 three-prong test, you are not opining on prong one or
11 prong two; is that right?

12 A. No, that's correct. I intend to be
13 primarily, you know, prong three. Occasionally
14 things may go between the two. Mr. Alvarez and
15 myself intended to split things the best we could
16 between those two prongs.

17 Q. And you've never conducted a cost/benefit
18 analysis; is that right?

19 A. I've reviewed cost/benefit analyses.

20 Q. And you don't get into things like the
21 nuts and bolts of how an AMI meter works; is that
22 fair?

23 A. That's fair.

24 Q. Now, in looking at the three-prong -- the
25 third prong of the test, that's the one that is to

1 determine whether an important regulatory principle
2 or practice has been violated; is that correct?

3 A. That's my understanding.

4 Q. And the Stipulation results from,
5 naturally, as a compromise; is that correct?

6 A. I think in general, yes, that's how
7 stipulations are developed.

8 Q. And in this case, multiple parties have
9 agreed to this Stipulation, correct?

10 A. That is correct and I believe I listed
11 the parties.

12 Q. And one of the regulatory principles that
13 you consider is the reasonableness of electric rates
14 charged by the utility; is that right?

15 A. It is.

16 Q. And reasonably priced electric rates
17 should be low and based upon prudently incurred
18 costs; is that right?

19 A. Yes.

20 Q. And in making that evaluation -- or
21 excuse me. In determining whether or not electric
22 utility prices are reasonably priced, you compare one
23 electric utility's rates versus another's; is that
24 right?

25 A. That's -- that's one thing I would look

1 at and also tend to look though at what the impact
2 could likely be over time as other programs or
3 changes occur.

4 Q. You understand that DP&L has the lowest
5 electric rates in the state of Ohio, right?

6 A. That's my understanding. I hope to keep
7 them at that level.

8 Q. And by the fourth year of this
9 settlement, the typical residential customer in
10 DP&L's service territory will be paying approximately
11 \$23 per year; is that correct?

12 A. Under this settlement and for what's
13 included within this settlement, that's the impact.
14 But there are other impacts that also would be
15 considered in looking at -- at what an overall impact
16 would be on providing reasonably priced retail
17 electric services.

18 Q. And you haven't analyzed where DP&L's
19 rates would be relative to other Ohio utilities at
20 the end of four years, correct?

21 A. I tried not to speculate on that.

22 Q. Let's see, let's talk a little bit more
23 about your background. You have no training as an
24 economist, right?

25 A. No, I do not.

1 Q. Or an -- econometrician?

2 A. If I can't pronounce it, no. No.

3 Q. If you can't pronounce it, then you don't
4 do it. That's -- that's a good way to go through
5 life. Hey, and you are not a licensed engineer?

6 A. I am not.

7 Q. And you don't consider yourself to be an
8 expert on technology?

9 A. No, I'm not.

10 Q. And you don't have any kind of a degree
11 in public policy, right?

12 A. No, I do not.

13 Q. Taking a look at page 5 of your
14 testimony.

15 A. I'm there.

16 Q. Okay. At the bottom of the page and
17 carrying over onto page 6, there are 10 bullet
18 points. Do you see those?

19 A. I do.

20 Q. And these items are all part of this
21 Stipulation and are commonly found in other Smart
22 Grid programs in this state, right?

23 A. I believe these to be the more common
24 Smart Grid types of items that are deployed, yes, and
25 I'm familiar with other settlements that would have

1 provisions like these.

2 Q. And these elements of a Smart Grid plan,
3 if properly implemented and managed, can provide
4 benefits to DP&L's customers; is that right?

5 A. I believe that's the hope.

6 Q. And then you also go on at the bottom of
7 page 6 and carrying over to page 7 and 8 and identify
8 some things in the settlement that in your opinion
9 are related tangentially to Smart Grid. Do you have
10 those in front of you?

11 A. Yes, I do.

12 Q. Okay. So the first item is paying
13 5.1 million for an electrical EV program funded by
14 DP&L's customers. Do you see that?

15 A. I see that.

16 Q. And you know that the power initiative of
17 the Public Utilities Commission, that initiative
18 discusses EV charging -- impacts of EV charging and
19 the impacts of EV charging on the electric
20 distribution -- distribution system; is that right?

21 A. If you are referring to PowerForward, the
22 PowerForward Initiative at the PUCO, there was
23 discussion about EV charging and the impact of that
24 on the electric distribution system.

25 Q. In -- and part of that discussion was

1 that EVs could impact electric utility load
2 requirements in a unique way; is that right?

3 A. Yes. But also within the PowerForward
4 document, it was also very premature for trying to
5 determine what that would be.

6 Q. And as EVs gain greater acceptance, a
7 more substantial deployment of EV charging
8 infrastructure will be necessary; would you agree
9 with that?

10 A. It may be necessary. I mean, I think,
11 you know, there's also -- there's other technologies,
12 other things are occurring all the time, so I think
13 it -- yeah, it may be. I don't know what the -- you
14 know, what the future is going to hold.

15 Q. Okay.

16 A. But I don't believe that that fits within
17 this settlement and that's kind of the reason why I
18 am raising these issues.

19 Q. Well, the EV -- the EV rebate program is
20 related to Smart Grid, is it not?

21 A. Yes, but I believe that the requirements
22 for what should be in DP&L's distribution
23 modernization plan addressed core technology. And
24 those core technologies would be AMI meters,
25 distribution automation, Volt/VAR -- Volt/VAR

1 optimization, and the technology that --
2 communications technology to tie it together.

3 Q. So this --

4 A. There was -- there was no requirement
5 within that for EV charging.

6 Q. But EV charging, you are not disagreeing
7 that as EV gains greater acceptance, a more
8 substantial deployment of EV charging infrastructure
9 will be necessary to charge those EVs, right?

10 A. And it might be reasonable at that time,
11 if that occurs, to consider what the impact will be,
12 and at that time when there is more concrete
13 information, determine a path. This is one -- the
14 SGP 1 is one relatively small part of an overall
15 distribution modernization plan. In my opinion the
16 core technology should be implemented, not all the
17 other bells and whistles.

18 Q. And you understand DP&L isn't proposing
19 to own any electric charging systems as part of this
20 settlement, right?

21 A. It's not an ownership issue. I believe
22 that DP&L is just planning to buy rebates for certain
23 types of charges. And again, if we rely upon the
24 PowerForward document, you know, there's -- there
25 was -- the PowerForward document, as I recall, would

1 be to find more -- you know, potentially to areas
2 where there are underserved areas, people that may
3 not have opportunities otherwise. The settlement
4 doesn't address anything close to that, if -- if the
5 justification for EV charging is because of
6 PowerForward, I don't think PowerForward takes you.

7 Q. My point with PowerForward is simply that
8 this was -- EV charging was a part of the
9 PowerForward discussion. You won't disagree with
10 that.

11 A. Oh, no. It was considered in
12 PowerForward. There is a lot of things that could
13 have impacts on Smart Grid, you know, smart
14 refrigerators, who knows. And that can have an
15 impact on the electric grid. That doesn't mean that
16 an electric utility should be offering rebate
17 programs for them.

18 Q. If I am understanding you correctly, it's
19 more of a timing issue.

20 A. Well, it's a timing; and it's a -- you
21 know, right now, I would say if you were to rely upon
22 this PowerForward document, it's a speculative issue.
23 If when this happens, then, of course, there may need
24 to be additional modifications to the system. I am
25 not disputing that.

1 Q. And you are --

2 A. I'm disputing doing this within the
3 Smart -- SGP 1.

4 Q. The next thing you have on your list is
5 the smart thermostat rebate program, and you would
6 agree that smart thermostats are a benefit associated
7 with Smart Grid, correct?

8 A. The smart thermostats, I believe that
9 Mr. Alvarez has touched on this as well, there could
10 be benefits with Smart Grid, but again, this was not
11 addressed within the settlement that DP&L reached in
12 its ESP. It didn't even exist when DP&L reached its
13 agreement in ESP I. And, you know, like a lot of
14 things, there could be a benefit in it at some point
15 in time but I believe that the focus should be on
16 core technology and that does not include smart
17 thermostats.

18 Q. But I think what you just said is that
19 you agree that smart thermostats could be a benefit
20 at some point in time.

21 A. It could be and this is very speculative
22 at some point in time.

23 Q. And you understand that that's not being
24 paid for by DP&L's customers, right, the \$1.8 million
25 for smart thermostats?

1 A. Yes. But, I mean, there is a cost of
2 that that's coming back to customers through this
3 settlement to get certain parties to -- to join the
4 settlement so, you know, it has an impact on
5 customers even though DP&L may be paying for it
6 through general funds.

7 MR. IRELAND: Your Honor, I move to
8 strike everything after yes and ask that the witness
9 be cautioned to just answer the question and not to
10 make a speech after -- he certainly can do that on
11 redirect.

12 MS. O'BRIEN: Your Honor, he was just
13 explaining his answer. I think a lot of witnesses
14 have been allowed to explain their answers, and
15 Mr. Williams should be allowed that leeway as well.

16 EXAMINER SCHABO: He did at least
17 initially answer the question this time so,
18 Mr. Williams, this is your proverbial bite at the
19 apple. Please try -- I'm overruling the motion to
20 strike but in the future, Mr. Williams, please try to
21 limit your answer to the question that was asked and
22 allow your attorney to bring out any further
23 explanation on redirect.

24 THE WITNESS: I will try harder, your
25 Honor.

1 MR. IRELAND: Thank you.

2 Q. (By Mr. Ireland) The next couple of items
3 have to do with the customer information system. Do
4 you see that, the customer information system
5 deferring expenses?

6 A. I do see that.

7 Q. And a CIS system provides meter data
8 management, the ability to effectively manage the
9 smart meter and how the data is used to process
10 bills; is that true?

11 A. Well, a new customer information -- the
12 customer information system is required for core
13 functionality of DP&L. In and of itself new CIS
14 systems, you know, aren't required to install Smart
15 Grid. But there are interface components like you
16 mentioned, the meter data management system, that are
17 applications that need to be made to a CIS system.

18 Q. Let me ask it this way, a CIS system
19 provides meter data system management, true?

20 A. A CIS with a meter data managing the
21 interface would -- would -- is what I believe is
22 being proposed here. It's an application that would
23 allow the interface with the AMI.

24 Q. And that is going to provide the ability
25 to effectively manage the smart meters; is that

1 right?

2 A. Through the -- through the meter data
3 management system, yes.

4 Q. And that data is going to be used to
5 process bills, correct?

6 A. Yes.

7 Q. And you -- you know that the current CIS
8 system used by DP&L is an older system, right?

9 A. I've heard that reference before.

10 Q. And you believe that -- or you've heard
11 that it needs to be replaced.

12 A. The company as part of the distribution
13 modernization plan proposed to replace it.

14 Q. It's the same system that was proposed to
15 be replaced in 2008, isn't it?

16 A. I believe -- I don't know exactly what
17 upgrades DP&L has done to the CIS system. But I
18 believe in the 2008 time frame that was -- at that
19 time it was considered that it also needed to be
20 replaced.

21 Q. Right. And you don't know what's
22 happened since 2008, right?

23 A. No. All I know is that it was applied
24 for in the distribution modernization plan to replace
25 it.

1 Q. And there are aspects of the CIS system
2 that are necessary in order to help manage the Smart
3 Grid; is that true?

4 A. That's true.

5 Q. And you would agree that since you
6 started reviewing these types of programs in 2008,
7 the CIS customer portal technologies have improved;
8 is that right?

9 A. That is true.

10 Q. And can be -- the CIS customer portal
11 could be used to provide outage and reliability
12 information to customers; is that right?

13 A. That's one application, yes.

14 Q. And as proposed in the Stipulation, about
15 \$8.8 million in expenses associated with CIS will be
16 collected through some future rate case proceeding;
17 is that right?

18 A. That is not correct. The settlement
19 document itself refers to the 8.8 million in expense
20 being recovered through base rates or some other --

21 Q. Okay.

22 A. -- rider.

23 Q. So the CIS investments are going to be
24 made now and then -- and customers will receive the
25 benefits from that investment before DP&L seeks

1 recovery of them in some manner; is that fair?

2 A. Again, assuming that there's benefits,
3 yes.

4 Q. The \$900,000 in low income weatherization
5 will benefit those customers who require
6 weatherization, right?

7 A. Yes. It may provide some benefit to
8 those customers. I don't know how it relates to
9 Smart Grid.

10 Q. And, similarly, the \$48,000 for the PIPP
11 program will provide a benefit to customers, will it
12 not?

13 A. Could provide a benefit to customers and
14 potentially as -- may have a future application in
15 the Smart Grid.

16 Q. And then prioritizing the installation of
17 the Smart Grid equipment will provide a customer
18 benefit to those people living in western and
19 northwestern Dayton; is that correct?

20 A. That's my understanding.

21 Q. Although you don't know anything about
22 western and northwestern Dayton; is that fair?

23 A. That's fair. I believe it's just called
24 a facility.

25 Q. Right. But it will provide a benefit to

1 those residential customers, will it not?

2 A. They may get the -- assuming that there
3 are benefits, they may get some of those benefits
4 sooner than others.

5 Q. As to your statement about the joint
6 partnership with the City of Dayton and University of
7 Dayton Hanley Sustainability Institute, you do not
8 know anything about the Hanley Sustainability
9 Institute; is that right?

10 A. I've only done a quick Google search on
11 it. No. It would be primarily a program related to
12 energy efficiency, sustainability and that was just
13 based upon the conversation we had last week.

14 Q. What did you say? Energy conservation
15 and sustainability?

16 A. Yes.

17 Q. The PACE program is going to provide
18 benefits to certain customers, isn't it?

19 A. Again, the PACE program, as I understand
20 it, and I also did a quick Google on this, that's
21 primarily an energy assistance program funding for
22 certain customers to be able to obtain energy
23 efficiency that they may not be able to obtain
24 otherwise.

25 Q. But --

1 A. I'm sorry, sir?

2 Q. Oh, I'm sorry. I cut you off, and I
3 apologize for that. This is a little stilted.

4 A. That's -- and that's why I say that it's
5 yes. You know, perhaps it's unrelated or at best
6 tangentially related.

7 Q. But what -- what I wanted to -- you said
8 it provides energy assistance programs for those
9 people that might not otherwise qualify?

10 A. Yeah. I believe that the PACE program,
11 as I understand it, is funding to help income
12 eligible people be able to get energy efficiency
13 measures that they may not be able to get otherwise.

14 Q. Would those generally be residential
15 customers?

16 A. I looked at this. I saw when I was
17 looking into this a little bit there were kind of two
18 different categories, one for residential, one for
19 commercial. I assume this is purely commercial
20 because it was in the residential section of the
21 settlement. I didn't address the commercial.

22 Q. So when you say you assume -- when you
23 assume -- you are just assuming that; you don't know
24 that as a fact.

25 A. Exactly where that money would be

1 applied, no.

2 Q. Okay.

3 A. I take it -- you know, I think it's fair
4 to say I don't see it being related to Smart Grid.

5 Q. And it's fair to say it may be a benefit
6 to residential customers.

7 A. There may be a residential customer that
8 would get some assistance from that. The value of
9 that assistance compared to the costs of bills,
10 that's all part of what has to be looked at and what
11 this proceeding is about.

12 Q. Right. You have not looked at that.

13 A. I have not.

14 Q. So let's talk about ESP I and the tariff
15 issue. You would agree that -- I think we all agree
16 that DP&L withdrew from ESP III.

17 A. Yes.

18 Q. And after it withdrew from ESP III, then
19 ESP I became applicable; is that right?

20 A. Yes. My understanding of the policy of
21 the state is that you -- DP&L would then revert to
22 ESP I because they had already reverted from ESP II
23 to ESP I.

24 Q. And as part of that Stipulation, DP&L
25 said they would delay implementation of the

1 Infrastructure Investment Rider until reviewed by the
2 Commission Staff and proved by the Commission. And,
3 further, that this IIR rate will recover any
4 prudently-incurred costs related solely to the
5 company's AMI and or Smart Grid approved plans; is
6 that your recollection?

7 A. Are we talking about the settlement in
8 ESP III or the ESP I?

9 Q. We are talking about ESP I.

10 A. Okay. I've got that full document now to
11 respond to questions you would have.

12 Q. Okay. It's on page 5, paragraph c.

13 A. I'm there.

14 Q. I'm working on getting there. Well, does
15 it say DP&L will delay implementation of the IIR?

16 A. Yes.

17 Q. Okay. Until reviewed by the Commission
18 Staff and approved by the Commission?

19 A. That is correct. That's related to the
20 initial Smart -- well, the initial Smart Grid plan or
21 plans that were submitted to the Commission -- that
22 were -- that were submitted.

23 Q. And then DP&L on November 26, 2019,
24 proposed tariffs included -- including IIR as a
25 placeholder; is that right?

1 A. Yes. On November 25, 2019, the Company
2 filed a -- you know, a document to initiate an IIR,
3 and but it doesn't -- the document itself says that
4 the IIR existed in 2017. There was no IIR in 2017.

5 Q. The tariffs that were filed by -- by DP&L
6 were approved by the PUCO in December of 2019; is
7 that right?

8 A. Based upon the misrepresentation that
9 DP&L made in that tariff filing, the IIR was created
10 at that point.

11 Q. The approval of the tariff by the
12 Commission -- prior to the approval of the tariff by
13 the Commission, any interested party, including the
14 Office of Consumers' Counsel, were directed to file
15 comments on the tariffs; is that right?

16 MS. O'BRIEN: Objection.

17 A. I believe that --

18 MS. O'BRIEN: Objection. Can he possibly
19 restate the question or clarify the question?

20 MR. IRELAND: Sure.

21 EXAMINER SCHABO: Yeah. Mr. Ireland, at
22 least for my edification, if you could specify which
23 tariffs you are talking about.

24 MR. IRELAND: I am talking about the
25 tariffs that were filed in November -- on

1 November 26, 2019, that contained the IIR as a
2 placeholder, and those tariffs were approved by --
3 technology.

4 EXAMINER SCHABO: Take your time.

5 MR. IRELAND: That's all right. Those
6 tariffs were approved by the Public Utilities --
7 Public Utilities Commission on December 18, 2019.
8 And in the order approving them in the tenth
9 paragraph, the Commission noted that they were filed
10 and the -- on November 27, 2019, the Attorney
11 Examiner directed interested parties to file comments
12 or otherwise respond to the proposed tariffs by
13 December 4, 2019.

14 And my question to Mr. Williams is
15 whether or not OCC had the opportunity to file
16 comments or otherwise respond to the proposed tariffs
17 after they were filed by The Dayton Power and Light
18 Company.

19 MS. O'BRIEN: Your Honor, I am going to
20 object. I think counsel just read into the record
21 his interpretation of a Commission order. If he
22 wants to introduce documents into the record, that's
23 fine. But Mr. Williams can't properly answer the
24 question based upon Mr. Ireland's representation.

25 MR. IRELAND: That's fine, your Honor. I

1 was trying to expedite this a little bit, but we have
2 exhibits that were distributed prior to the hearing
3 from Mr. Hollon. Does Mr. Williams have those?

4 EXAMINER SCHABO: Mr. Williams, do you
5 have access to exhibits that were exchanged between
6 the parties prior to this hearing for the purposes of
7 hearing?

8 THE WITNESS: Yes. I have a request for
9 documents. I don't know -- I don't know specifically
10 as exhibits, but I have a request for documents and
11 that's what I have.

12 EXAMINER SCHABO: Can we go off the
13 record for just a moment?

14 (Discussion off the record.)

15 EXAMINER SCHABO: Let's go back on the
16 record.

17 We are back on the record having
18 determined that we do have exhibits available for
19 viewing.

20 Mr. Ireland.

21 MR. IRELAND: Yes, thank you, your Honor.
22 So for purposes of just making the record a little
23 bit more clearer, I think our next Exhibit is 12.

24 EXAMINER SCHABO: That is -- that is what
25 my notes indicate.

1 MR. IRELAND: Okay. So let's mark this
2 as DP&L 12 or Applicant's 12.

3 EXAMINER SCHABO: So if you would
4 identify the document for me.

5 MR. IRELAND: Yes. This is the second
6 finding and order entered on December 18, 2019, in
7 Case Nos. 08-1094, 08-1095, 08-1096, and 08-1097.

8 EXAMINER SCHABO: That document will be
9 so marked. Thank you very much.

10 (EXHIBIT MARKED FOR IDENTIFICATION.)

11 Q. (By Mr. Ireland) And, Mr. Williams, I
12 would like to direct your attention to I think it is
13 page 4. Let's see, paragraph 10 which starts at the
14 bottom of page 3 and carries over to the top of page
15 4. Do you have that in front of you, sir?

16 A. I do.

17 Q. And it reads, the second sentence of
18 paragraph 10 says "On November 27, 2019, the Attorney
19 Examiner directed interested parties to file comments
20 or otherwise respond to the tariffs by December 4,
21 2019." Do you see that?

22 A. I do see that.

23 Q. And would you agree that OCC had the
24 opportunity to file comments or otherwise respond to
25 the proposed tariffs that were filed on November 26,

1 2019?

2 A. I believe there was an opportunity but --
3 but I believe that OCC, as did others, relied upon a
4 misrepresentation made by DP&L when they filed the
5 tariffs.

6 MR. IRELAND: Your Honor, I would move to
7 strike everything after the first part of the answer
8 because it was completely speculative as to what OCC
9 and the other parties were thinking and doing.

10 MS. O'BRIEN: Well, your Honor, I would
11 add that is not speculative as to OCC. He's
12 explaining his answer as -- in response to
13 Mr. Ireland's question as to the reason that OCC
14 didn't file comments or did or didn't do something.
15 So I would allow it to stand -- or I would request
16 that you allow it to stand, please.

17 EXAMINER SCHABO: Motion to strike is
18 granted. Please strike everything after his initial
19 answer.

20 Q. (By Mr. Ireland) And in that same
21 proceeding, Mr. Williams, you're aware that OCC filed
22 an application for rehearing, right?

23 A. I am aware of that, and I do have a copy
24 with me.

25 Q. And you would agree that OCC did not

1 challenge the tariffs in its application for
2 rehearing; is that right?

3 A. I don't -- I think that there was a
4 challenge of certain tariffs, not this particular
5 tariff, the IIR.

6 Q. Thank you. And when the company withdrew
7 its application for the original Smart Grid, the
8 Commission asked DP&L to continue investigating Smart
9 Grid and make a filing at the appropriate time; is
10 that right?

11 A. You're talking about the January 5, 2011,
12 entry?

13 Q. Yeah. I'm skipping back in time on you.
14 I apologize for that.

15 A. Okay. Yes, when the Commission -- can I
16 provide a little bit of background on that for what
17 that entry is?

18 Q. Well, no. You can do that on redirect.
19 My question is simply when -- when the original Smart
20 Grid was withdrawn, the Commission asked DP&L to
21 continue investigating Smart Grid and make a filing
22 at the appropriate time; isn't that right?

23 MS. O'BRIEN: Your Honor, again, I
24 would -- I would again object. Is there a particular
25 document that Mr. Ireland is referencing?

1 EXAMINER SCHABO: Yes. He is referencing
2 the January 5, 2011, entry.

3 MS. O'BRIEN: And is there a specific
4 provision? Is it still the same paragraph? I
5 apologize. I am trying to follow along so.

6 EXAMINER SCHABO: Mr. Ireland, would you
7 like to mark an exhibit?

8 MR. IRELAND: You know, your Honor, for
9 the purposes of this one question and answer, I'm not
10 sure that it's really necessary to mark the exhibit
11 because the Commission's decision says what it says
12 so let me go on to the next question.

13 EXAMINER SCHABO: Thank you.

14 Q. (By Mr. Ireland) The IIR tariff that was
15 approved by the Commission a year ago has had no
16 impact on residential customers; is that right?

17 A. You mean like in terms of cost recovery,
18 things like that?

19 Q. Yes.

20 A. No. I am not aware of any money that's
21 been recovered through it.

22 Q. So you would agree that DP&L's
23 residential customers have not been affected
24 negatively by the existence of the IIR -- IIR tariff
25 that was filed in November of 2019; is that right?

1 A. Customers will be negatively affected if
2 this Stipulation is approved and the cost recovery of
3 SGP 1 runs through it.

4 Q. That wasn't my question. Mr. Williams,
5 my question was as of -- as you sit here today, they
6 have not been affected negatively by the existence of
7 that IIR tariff, right?

8 A. That is correct.

9 Q. And you also attended a technical
10 conference concerning Smart Grid with DP&L in March
11 of 2020, did you not?

12 A. I recall a technical conference. I
13 recall settlement and a cautious talking about that
14 because I believe that there was also settlement
15 discussions in that call.

16 Q. And you don't -- you didn't ask any
17 questions about the tariff during that technical
18 conference, correct?

19 MS. O'BRIEN: Objection, your Honor. It
20 asks him to reveal what he may or may not have -- or
21 may have discussed in settlement negotiations.

22 EXAMINER SCHABO: Mr. Ireland, do you
23 have a response to that?

24 MR. IRELAND: Well, I am not sure -- I'm
25 just trying to get to his knowledge of the tariff and

1 his raising the subject and he did attend this
2 conference and I am just -- I would like to know
3 whether or not he asked any questions about it. It's
4 a simple yes or no question. I am not asking for him
5 to explain the context of it or who he talked to at
6 OCC about it or what he learned. Just did you raise
7 the subject, yes or no.

8 MS. O'BRIEN: Again, I would object.

9 EXAMINER SCHABO: Go ahead and answer the
10 question. He can answer the question.

11 MS. O'BRIEN: That's fine.

12 A. The -- I did not raise a tariff issue.

13 Q. Okay.

14 A. I raised an issue that -- of the use of
15 the IIR that I did not believe that the -- that the
16 distribution modernization plan, the way it was
17 structured, fit into the IIR that's been raised
18 consistently.

19 MR. IRELAND: Your Honor, I would move to
20 strike everything after I did not raise the issue.

21 MS. O'BRIEN: Your Honor, he asked -- he
22 asked what he said, and I objected initially. He was
23 required to answer, so he should be entitled to
24 explain his answer.

25 EXAMINER SCHABO: Ms. O'Brien, I invite

1 you to bring that out on redirect. The motion to
2 strike will be granted.

3 Mr. Williams, I caution you again please
4 answer the question that is being asked and allow
5 your counsel to bring out any explanations on
6 redirect.

7 THE WITNESS: Thank you.

8 Q. (By Mr. Ireland) At the bottom of page 8
9 of your testimony, you say that the -- you testify
10 that DP&L's Smart Grid plan should be comprehensively
11 reviewed in an appropriate regulatory proceeding. Do
12 you see that?

13 A. I do.

14 Q. And as I understand it, you believe that
15 absence of a comprehensive review is due to the fact
16 that the total \$800 million plus Smart Grid plan has
17 not been reviewed; is that right?

18 A. That is correct.

19 Q. And --

20 A. Well, it's not -- it's not been reviewed
21 under what I believe would be a modernization plan
22 if -- if the modernization plan is supposed to follow
23 the ESP I, that's a different -- that's different
24 from what the modernization plan is that was filed
25 pursuant to ESP III.

1 Q. You would certainly agree that as to the
2 first phase of the Smart Grid plan, the Stipulation
3 that's before you, that there is an accounting audit
4 built into the Stipulation, correct?

5 A. Yes, and only an accounting audit.

6 Q. And OCC will have an opportunity to
7 participate in that review to the best of your
8 knowledge?

9 A. I don't know based upon how the
10 settlement is structured how those filings will
11 occur, when they'll occur, what level of
12 participation that the Commission might provide to
13 other parties.

14 Q. Well, the Staff will participate in that,
15 correct?

16 A. I believe that Staff -- I believe the
17 settlement falls to either Staff or someone hired by
18 Staff.

19 Q. Right. And they are -- and you would
20 expect the Staff to be concerned about many of the
21 same issues that you would be concerned with, right?

22 A. An accounting audit in itself is not
23 necessarily what's called for in the PowerForward
24 document. That would fall for a management audit and
25 something -- a much more comprehensive review of

1 making sure that benefits are provided.

2 MR. IRELAND: Your Honor.

3 A. Staff --

4 Q. Sorry. I thought you were finished.

5 A. I'm just trying to explain what that
6 audit is and where a level of participation may or
7 may not occur. And I think that's what I thought you
8 asked.

9 MR. IRELAND: Your Honor, could I have
10 the question and answer reread, please.

11 EXAMINER SCHABO: Yes, please.

12 Ms. Gibson.

13 (Record read.)

14 MR. IRELAND: Your Honor, I would move to
15 strike the answer and have him answer the question
16 that I asked which if it requires more clarity, I can
17 certainly rephrase it, but I don't think he answered
18 the question.

19 EXAMINER SCHABO: Ms. O'Brien.

20 MS. O'BRIEN: Your Honor, again, he's
21 explaining his answer. I mean, if counsel wants to
22 rephrase his question so he can get a more direct
23 answer, that -- that would be fine.

24 EXAMINER SCHABO: I will go ahead and
25 strike the answer as nonresponsive and invite

1 Mr. Ireland to reask it with more clarification.

2 Q. (By Mr. Ireland) You would agree that the
3 Staff of the PUCO would be concerned about many of
4 the same issues that you raise with respect to cost;
5 is that right?

6 A. About cost, yes.

7 Q. Now, you also in your testimony are
8 critical of the excused compliance language in the
9 Stipulation that's toward the end of your testimony,
10 pages 31 and 32?

11 A. I'm there.

12 Q. And as I understand, your criticism is
13 that you believe that this excused compliance
14 provision is too broad?

15 A. I believe it's overly broad.

16 Q. Now, Ms. Schroder has testified in this
17 proceeding and given some examples of where excused
18 compliance may apply. Are you familiar with them?

19 A. I'm not familiar with what Ms. Schroder
20 might have provided. I am very familiar with the
21 discovery responses that DP&L provided.

22 Q. Right. I am not asking --

23 A. Those are examples.

24 Q. Right. This was a matter that was
25 elicited on cross-examination of Ms. Schroder where

1 she testified about this provision of the
2 Stipulation. And my question to you simply is are
3 you aware of her testimony?

4 A. Of examples that excused compliance, no,
5 I am not.

6 MR. IRELAND: Okay. Thank you, your
7 Honor. I would like maybe 3 minutes, but I think I'm
8 done.

9 EXAMINER SCHABO: Okay. Let's make it 5.
10 We will go off the record, and we will come back on
11 at 10:35.

12 (Recess taken.)

13 EXAMINER SCHABO: Let's go back on the
14 record. It's 10:36.

15 Mr. Ireland, do you have any additional
16 cross?

17 MR. IRELAND: I do not. I do not, your
18 Honor. Thank you.

19 And thank you, Mr. Williams.

20 THE WITNESS: Thank you, Mr. Ireland.

21 EXAMINER SCHABO: Thank you.

22 Any of the Intervenors who indicated a
23 desire to cross want to volunteer to go first?

24 MR. WYGONSKI: Your Honor, I had a few
25 questions.

1 EXAMINER SCHABO: Wonderful.

2 Mr. Wygonski.

3 MR. WYGONSKI: Okay.

4 EXAMINER SCHABO: Proceed.

5 MR. WYGONSKI: Thank you.

6 - - -

7 CROSS-EXAMINATION

8 By Mr. Wygonski:

9 Q. Mr. Williams, you acknowledge that DP&L
10 will not collect CIS costs under the IIR, correct?

11 A. I do not acknowledge that.

12 Q. You -- you don't think that -- I'm sorry.
13 Are you saying that DP&L will collect CIS costs under
14 the IIR?

15 A. I believe that -- there's two different
16 components to the CIS, the capital costs themselves
17 to the O&M, the operations and maintenance part of
18 it. I believe under the settlement the Company is
19 seeking to defer those costs to be recovered either
20 under the -- the base rates or some other rider and
21 in my mind that could also be the IIR at some point.

22 Q. Do you have the settlement in front of
23 you?

24 A. I do.

25 Q. Can you turn to page 21, paragraph 10g.

1 A. I'm there.

2 Q. Okay. Now, that section of the
3 settlement provides that DP&L will recover a return
4 on its capital investment in the CIS through base
5 distribution and not through the IIR, correct?

6 A. For the capital costs, that's correct.

7 Q. Okay. And it also provides that DP&L
8 shall be entitled to defer O&M through base
9 distribution rates for future recovery through base
10 distribution rates or through a future rider,
11 correct?

12 A. Yes. And/or a future rider is why I
13 can't agree. I don't know what the future is going
14 to hold for the IIR.

15 Q. But does that say through the IIR?

16 A. No, because it's open how those costs
17 would occur. But they're not -- that component of it
18 may or may not be recovered through base rates.

19 Q. Okay. That wasn't my question. Does
20 that section provided that O&M can be recovered
21 through the IIR? Does it explicitly say that?

22 A. It does not say the words IIR. It says
23 future rider.

24 Q. Thank you. Okay. And, Mr. Williams, you
25 would agree that it is generally more favorable for

1 customers for the utility to make capital
2 improvements in its system and then seek recovery
3 later from customers through base rate after the new
4 plan is used and useful, correct?

5 A. Yeah. Generally that's the case, yes.

6 Q. Okay. And it is your understanding that
7 DP&L has agreed to install the CIS and not
8 immediately pass through costs to customers through
9 the IIR.

10 A. That is correct.

11 Q. And DP&L is not seeking any approvals in
12 this case to collect costs for the CIS, correct?

13 A. It's not seeking collection in this case.

14 Q. Right. And any future collection would
15 be subject to separate approval by the Commission,
16 correct?

17 A. That's my understanding.

18 Q. Okay. And you agree that DP&L has agreed
19 to invest in the CIS no later than six months after
20 approval of this settlement, correct?

21 A. Can you refer me to the page in the
22 settlement that identifies this timeline?

23 Q. Yes. Page --

24 A. Actually I found it. Page 20, I'm sorry.

25 Q. That's okay.

1 A. And it does say no later than six months.

2 Q. Thank you. And you do agree that DP&L
3 has agreed to install the CIS, just not to pass those
4 costs through.

5 A. You broke up on that question, I'm sorry.

6 Q. You agree that DP&L has agreed to install
7 the CIS, just not to pass the costs through to
8 customers at this time.

9 A. That would be my understanding.

10 Q. Okay. And I'm sorry. I broke up. Can
11 everybody still hear me?

12 EXAMINER SCHABO: Yes.

13 MR. WYGONSKI: Okay. My screen just went
14 fuzzy.

15 EXAMINER SCHABO: Are you -- can you see
16 everyone and hear everyone?

17 MR. WYGONSKI: Yes, I can hear you now.

18 EXAMINER SCHABO: Okay.

19 Q. (By Mr. Wygonski) Mr. Williams, you agree
20 that if the CIS is installed, customers will receive
21 the benefit of the CIS once it's active, correct?

22 A. Yeah, whatever benefits would come from
23 the CIS. Again, as I was trying to explain to
24 Mr. Ireland, there's -- CIS is common with or without
25 Smart Grid programs. It's the structure that's

1 needed to operate the meter data management, things
2 like that.

3 Q. Okay.

4 A. So there are benefits in CIS and if there
5 are benefits to a company's Smart Grid through the
6 AMI meter, it would occur through that interphase
7 with the CIS.

8 MR. WYGONSKI: Your Honor, I would like
9 to move to strike everything in that answer after
10 yes. I was asking about the timing of benefits, not
11 about Mr. Williams' opinion as to the value of those
12 benefits.

13 EXAMINER SCHABO: Karen, could you --
14 could you reread that question and answer, please.

15 (Record read.)

16 EXAMINER SCHABO: I'll let that answer
17 stand. The motion to strike is denied.

18 MR. WYGONSKI: Thank you.

19 Q. (By Mr. Wygonski) Mr. Williams, you agree
20 that under the settlement DP&L will offer a
21 time-of-use program, correct?

22 A. It's my understanding.

23 Q. Okay. And you agree that the -- that
24 under the settlement DP&L will implement a customer
25 portal for CIS, correct?

1 A. That's also my understanding.

2 Q. And offer third-party access to CIS?

3 A. Yes.

4 Q. And not charge customers or third parties
5 for that information?

6 A. I believe that's what the settlement
7 says.

8 Q. Okay. And you understand any deferral
9 associated with CIS O&M is capped at 8.8 million,
10 correct?

11 A. Yes.

12 Q. And as we kind of touched on before,
13 deferral of those costs is beneficial to customers,
14 correct?

15 A. I'm not saying that at all.

16 Q. It's not beneficial for customers to
17 receive the benefit of the installation before they
18 start paying for it?

19 A. I don't believe that a solid basis has
20 been established for an \$8.1 million deferral.

21 Q. Again, regardless of your opinion on the
22 value of these benefits, you would agree that it's
23 favorable to customers to have the installation up
24 front and the costs deferred, correct?

25 A. I don't -- I don't believe that those

1 costs need to be deferred. Those -- there's nothing
2 that's established outside of this settlement that
3 there are costs to be deferred.

4 Q. Okay. But a deferral is not even a
5 guaranteed cost recovery, correct?

6 A. I believe that they are subject to a
7 later review. But typically a utility would
8 establish that deferral or request for a deferral
9 through a separate application. There's not some
10 predetermined outcome in a settlement approved, you
11 know, where parties are agreeing to a level of a
12 settlement, especially where one hasn't been
13 established.

14 Q. Well, in this settlement there is a
15 predetermined limit and that is the \$8.8 million cap,
16 is it not?

17 A. This is a cap but I don't know what
18 those -- what those costs are or how those costs are
19 going to be applied. I don't know whether or not
20 those are justified. You know, typically a utility
21 would explain what those costs are and why they are
22 not collecting them.

23 EXAMINER WILLIAMS: Ms. O'Brien, are you
24 having tech issues? I'm sorry. I saw Ms. O'Brien
25 waving into the camera, so I didn't mean to

1 interrupt.

2 Ms. O'Brien, I see your lips moving.

3 MS. O'BRIEN: I apologize, your Honor.
4 The call that was connecting my audio suddenly
5 dropped, so would it be possible to have maybe the
6 last question and answer reread?

7 EXAMINER WILLIAMS: Ms. Schabo, I will
8 let you address that. I just wanted to make sure. I
9 saw a hand waving so.

10 EXAMINER SCHABO: Appreciate that, Judge
11 Williams, very much.

12 Yes. Ms. Gibson, if you would --
13 actually I'll say this, we interrupted in the middle
14 of Mr. Williams' answer, so if you would just read
15 the question and then as far through his answer as we
16 got, I would appreciate it.

17 (Record read.)

18 EXAMINER SCHABO: Is that about where you
19 dropped off, Ms. O'Brien, or do we need to go back
20 any further?

21 MS. O'BRIEN: I think that's fine. Thank
22 you.

23 EXAMINER SCHABO: Okay. Mr. Williams,
24 are you done with your answer there?

25 THE WITNESS: Yes.

1 EXAMINER SCHABO: Okay. Mr. Wygonski, I
2 turn it back to you.

3 MR. WYGONSKI: Thank you, your Honor.

4 Q. (By Mr. Wygonski) Mr. Williams, so that
5 deferral though, the utility would have to
6 demonstrate the prudence of those costs in its later
7 application for recovery, would it not?

8 A. Yes. There would be a later -- there
9 would be a later application to seek those costs, you
10 know, or they could be recovered through base rates,
11 some other rider. It's -- it's ambiguous how those
12 costs are going to be collected.

13 Q. Okay. But regardless of whether they
14 were recovered through a future rider or through
15 future base rates, they would still be subject to
16 Commission approval before they could be collected,
17 correct?

18 A. That is my understanding.

19 Q. Thank you. Okay. And in the entry
20 establishing the deferral, isn't it true that the
21 order explicitly says that granting deferral does not
22 guarantee cost recovery?

23 A. There is not an entry requesting a
24 deferral in this case. This request only comes
25 through this settlement. There isn't an application

1 and that's why I raise the issue.

2 Q. Sorry. I meant to say in a typical order
3 approving deferral of costs, not specific to this
4 case. Let me rephrase. Typically an order
5 establishing deferral states that cost recovery is
6 not guaranteed, correct?

7 MS. O'BRIEN: Objection, requires him to
8 speculate.

9 EXAMINER SCHABO: He can answer the
10 question to his knowledge.

11 A. There would be two different aspects.
12 One aspect would explain what the nature of the
13 deferral is. The second would be that in granting a
14 deferral, that there's not a guarantee for the
15 recovery until there is a review at some later point.

16 Q. Thank you.

17 A. Both aspects exist in most of the
18 deferrals that I've seen.

19 Q. All right. Okay. Now, Mr. Williams, did
20 you review Smart Grid Phase 1 as originally proposed
21 by DP&L in their initial application?

22 MS. O'BRIEN: Objection, your Honor, to
23 the characterization of SmartGrid Phase 1 in the
24 application that was filed in this case.

25 EXAMINER SCHABO: I don't understand your

1 objection, so it's overruled.

2 MS. O'BRIEN: Well --

3 EXAMINER SCHABO: You may rephrase your
4 objection.

5 MS. O'BRIEN: Okay. I object to the
6 characterization of the Smart Grid plan that was
7 filed in the initial application filed in this case
8 as Smart Grid Plan Phase 1.

9 EXAMINER SCHABO: Overruled. We've dealt
10 with this issue with another witness.

11 Mr. Williams, do you need the question
12 reread?

13 THE WITNESS: If you would, please.

14 EXAMINER SCHABO: Karen, would you please
15 reread the question.

16 (Record read.)

17 A. I reviewed the -- the application for a
18 distribution modernization plan that was proposed in
19 this proceeding. Smart -- SGP 1, that's a function
20 of this settlement, not that application.

21 Q. Okay. So you did review DP&L's original
22 proposal for a Smart Grid project.

23 A. Yes. But that project would be the
24 distribution modernization plan filed in this
25 proceeding.

1 Q. Okay. And so you've also reviewed that
2 plan, Smart Grid Phase 1, as modified by the
3 settlement.

4 A. The settlement -- the settlement modifies
5 the distribution modernization plan. Maybe I'm
6 getting a little concerned here -- or confused on
7 what -- when you talk about this Phase 1, there's a
8 distribution modernization plan. Phase 1 is the
9 settlement that modifies that application.

10 Q. Could you turn to page 5 of the
11 settlement. Read the first line -- first two lines
12 of paragraph 3a.

13 A. Yes. It says "DP&L may seek to recover a
14 return on and of its prudently incurred SGP Phase 1
15 capital investments and its associated operations and
16 maintenance expenses through the IIR."

17 Q. Okay. Just wanted to get that clear. So
18 the settlement does refer to this phase as Phase 1,
19 correct?

20 A. The settlement is Phase 1. This isn't --
21 but it's -- the overall distribution modernization
22 plan was renamed in the settlement to S -- this Smart
23 Grid plan. It's -- really was applied for as a
24 distribution modernization plan.

25 Q. Okay. Do you understand that when I say

1 Smart Grid Phase 1, I am referring to that plan as
2 modified by the settlement, as the settlement refers
3 to it throughout?

4 A. Yes. As long as what's -- yes, as long
5 as you are referring to this settlement document,
6 that is, SGP Phase 1.

7 Q. Thank you. Okay. So did the settlement
8 make that -- I'm sorry. Strike that. Let me
9 rephrase.

10 The settlement made the Smart Grid plan
11 more favorable to customers than the plan was as
12 originally proposed in DP&L's application, did it
13 not?

14 A. I don't believe so.

15 Q. So on page 13 of your testimony, you
16 mention the full price tag of approximately
17 867 million for Smart Grid. Where does this number
18 come from?

19 A. Where are you at?

20 Q. Sorry. Page 13 of your testimony.

21 A. Okay. And your question is?

22 Q. Where does that \$867 million price tag
23 come from?

24 A. That price tag comes from the application
25 that DP&L filed for its distribution modernization

1 plan.

2 Q. Okay. And Smart Grid Phase 1 as modified
3 by the settlement caps this plan at \$267 million,
4 correct?

5 A. Yes, there is a cap established at the --
6 at the 267.

7 Q. Okay. And you would agree that
8 \$267 million is significantly smaller than
9 \$867 million, correct?

10 A. It's certainly a lower number, but I
11 believe it's also somewhat comparing apples and
12 oranges.

13 Q. But you do agree that the settlement
14 lowered the price of Smart Grid for customers, did it
15 not?

16 A. It lowered the cost. I don't know that
17 it's providing any more benefits. I only know of one
18 benefit that for sure customers are going to get out
19 of S -- out of the SGP Phase 1 as identified in this
20 settlement and this is something in the neighborhood
21 of about \$7.7 million in operational savings that
22 will be credited over the four-year term of the ESP.
23 I don't see anything else that's a guarantee other
24 than the money they are going to give to the
25 settlement parties.

1 Q. So I'm referring specifically to the
2 settlement itself. Paying 267 million is more
3 beneficial to customer than paying 867 million, is it
4 not?

5 A. Provided that it's getting \$267 million
6 in benefits, then, yeah, it's a lower number, but if
7 it's not providing benefits, why bother spending even
8 267?

9 Q. Again, I am not asking whether your --
10 what your judgment on the value of that 267 million
11 is. I am asking you if it is beneficial for
12 customers to pay less.

13 A. A lower number -- a lower number is -- is
14 a good thing in all things equal.

15 Q. All right. And so this settlement, if
16 approved, would only offer -- I'm sorry. Let me
17 rephrase.

18 This settlement, if approved, would only
19 authorize that \$267 million to be passed through to
20 customers, correct?

21 A. It's my understanding that's the cap.

22 Q. Okay. And this settlement alone would
23 not permit DP&L to recover any further Smart Grid
24 costs from customers, correct?

25 A. I believe anything further would have to

1 be approved by the Commission either in the form
2 of -- through another application, potentially be
3 recovered through IIR, potentially be recovered
4 through something else.

5 Q. Right. So through this proceeding, this
6 current proceeding, nothing beyond that 267 million
7 will be passed through to customers, correct?

8 A. I believe that's the cap in this
9 proceeding.

10 Q. Okay. Now, I want to ask you a question
11 about a provision of your testimony. On page 32 you
12 assert that DP&L is buying signatures. Are you
13 referring to economic development incentives and
14 grants in that portion of your testimony?

15 A. You are on page 32?

16 Q. Correct.

17 A. Which line are you referring to?

18 Q. Answer to --

19 A. Economic development, I am not sure I am
20 finding that right now.

21 Q. So answer 22 on page 32, lines 16 and 17,
22 you say that DP&L is buying signatures. Are you
23 referring to the economic development incentives
24 contained within the settlement?

25 A. It could include that. I believe that

1 there's -- it goes beyond that.

2 Q. Okay. And are you aware of how these
3 incentives are calculated?

4 A. No, I'm not; but, I mean, I don't think
5 there is any doubt they're not related to Smart Grid.
6 And that's what we're talking about here today.

7 MR. WYGONSKI: Your Honor, I would like
8 to move to strike everything in that answer beyond,
9 no, they're not. We are talking about the settlement
10 today in its entirety, and my question was whether he
11 knew how those incentives were calculated, not
12 whether or not they were limited to -- or whether he
13 thought they were related to any other portion of the
14 settlement.

15 EXAMINER SCHABO: Ms. O'Brien, do you
16 have any response?

17 MS. O'BRIEN: I would just say, you know,
18 he's explaining his answer. If OMA's counsel would
19 maybe like to clarify the question a little bit more
20 so Mr. Williams can provide a more clear answer, that
21 would be fine with us.

22 EXAMINER SCHABO: Motion to strike is
23 granted. Karen, if you would strike everything
24 after -- I'm sorry. What was the first part of his
25 answer?

1 (Record read.)

2 EXAMINER SCHABO: Thank you. If you
3 would strike everything after "No, I'm not."

4 Mr. Wygonski.

5 MR. WYGONSKI: Yes, your Honor. Let me
6 keep going. Where was I?

7 Q. (By Mr. Wygonski) Mr. Williams, if you
8 could turn to page 36 of the Stipulation, the
9 settlement paragraph 15a. That provides that the
10 economic development incentives are calculated on a
11 per kilowatt basis, correct?

12 A. I didn't specifically address these
13 particular provisions. You know, when it got to
14 paragraph 14 talking about additional commercial and
15 industrial customer benefits, I don't know how
16 they're calculated because I typically don't address
17 them, but my point is that I limited my review not to
18 these provisions but to the provisions that were
19 identified to be for residential customers.

20 Q. Okay. So --

21 A. I mean, if you are wanting me to read
22 something or whatever but that was not part of my
23 analysis nor is that included in my testimony.

24 Q. Okay. So when -- when you were referring
25 to buying signatures, you were not referring to

1 economic development incentives or grants that were
2 paid to the signatory parties, correct?

3 A. I believe someplace in my testimony I
4 identified that it was primarily the residential,
5 benefits that were supposedly for residential, and
6 then I went on to say that, you know, there were
7 others as well and that, you know, there were a large
8 number of hands out for this settlement, but I only
9 address the residential.

10 MR. WYGONSKI: Okay. Your Honor, could
11 we have -- take a 5-minute break? We've been going
12 for about two hours now. I need like -- I could use
13 like a 5-minute break just to reorganize here for a
14 second.

15 EXAMINER SCHABO: Absolutely. We'll take
16 a 5-minute break. It's 11:08. We will take a
17 7-minute break. We will come back on at 11:15.

18 We are off the record.

19 (Recess taken.)

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

22 It's 11:17. We are back on the record.
23 Mr. Wygonski.

24 MR. WYGONSKI: Thank you, your Honor.

25 Q. (By Mr. Wygonski) Mr. Williams, returning

1 to page 32 of your testimony, you say that DP&L is
2 spending approximately \$9.5 million to buy signatures
3 for the settlement; is that correct?

4 MR. SHARKEY: Actually, your Honor, I
5 don't see Jeff Ireland back yet.

6 EXAMINER SCHABO: Thank you, Mr. Sharkey.
7 Yes. Let's go back off the record for
8 just a moment.

9 (Discussion off the record.)

10 EXAMINER SCHABO: We are back on the
11 record. We have everyone that we need. Mr. Ireland
12 was just having camera trouble.

13 Have you located the reference
14 Mr. Wygonski provided, Mr. Williams?

15 THE WITNESS: Yes, I'm there.

16 Q. (By Mr. Wygonski) So on line 17 through
17 19, you stated that "DP&L is spending approximately
18 9.5 million to buy signatures," correct?

19 A. Yes.

20 Q. Okay. Were you in the hearing yesterday
21 during Dr. Hill's testimony?

22 A. I was not.

23 Q. You were not? Okay. And based on what
24 you told me earlier that you were referring only to
25 residential customer benefits, are you stating that

1 that \$9.5 million only includes payments and
2 incentives to signatories who represent residential
3 customers?

4 A. Or Dayton.

5 Q. Or Dayton.

6 A. Yes, that's where I believe that came
7 from.

8 MR. WYGONSKI: Okay. Thank you. I have
9 nothing further, your Honor. Actually one second.

10 Sorry. I have nothing further, your
11 Honor.

12 EXAMINER SCHABO: Thank you.

13 Next on my list for cross was Smart
14 Thermostat Coalition. Ms. Fleisher.

15 MS. FLEISHER: Thank you, your Honor.

16 - - -

17 CROSS-EXAMINATION

18 By Ms. Fleisher:

19 Q. Mr. Williams, can you hear me?

20 A. I can hear you.

21 Q. Great. And in your testimony on page 6
22 going onto page 7, you discuss items that you believe
23 are "either tangentially related or have nothing to
24 do with grid modernization," correct?

25 A. That is correct.

1 Q. And your testimony doesn't formally
2 define the term "grid modernization," correct?

3 A. Grid modernization to me is referring
4 back to the application itself, the distribution
5 modernization plan that was filed as part -- part of
6 all this.

7 Q. You mean in the docket in this
8 proceeding?

9 A. Yes, the application filed in this
10 proceeding.

11 Q. And for purposes of defining or of
12 opining on what is related or not related to grid
13 modernization, did you review the Dayton Power and
14 Light application filed in the ESP I Case Docket
15 08-1094, et al.?

16 A. Have I reviewed the Stipulation or?

17 Q. That original application by the company.

18 A. Yes, I've looked at that -- parts of
19 that.

20 MS. FLEISHER: Okay. That's all I have,
21 your Honor.

22 Oh, actually just a housekeeping item.
23 For purposes of having that application within the
24 record, do we need to have that marked and admitted
25 as an exhibit or given that it's publicly filed with

1 the Commission, what would you prefer?

2 MS. O'BRIEN: Your Honor, I don't -- were
3 we provided with it ahead of time?

4 MS. FLEISHER: Well, I guess I am not
5 asking him any questions about it, so I hadn't
6 brought it ahead of time.

7 MS. O'BRIEN: Okay. Well --

8 EXAMINER SCHABO: Go ahead, Ms. O'Brien.

9 MS. O'BRIEN: No. I guess I would object
10 to the -- to it being admitted into the record to the
11 extent it wasn't provided ahead of time in accordance
12 with your Honor's directive to provide documents that
13 may be used or admitted in -- in the -- within the
14 hearing.

15 EXAMINER SCHABO: Ms. Fleisher, would you
16 like us to take administrative notice of anything?

17 MS. FLEISHER: Yes, your Honor. I would
18 ask, request, as I think is common practice, to take
19 administrative notice of that as a document publicly
20 filed with the Commission.

21 EXAMINER SCHABO: And would you just give
22 me another reference, please?

23 MS. FLEISHER: Sure. So that is Docket
24 08-1094 and it's the application filed by the company
25 in that docket on -- on October 10, 2008.

1 EXAMINER SCHABO: We will take
2 administrative notice.

3 MS. FLEISHER: Thank you, your Honor.
4 That's all I have.

5 EXAMINER SCHABO: Thank you,
6 Ms. Fleisher.

7 Environmental Law & Policy Center.

8 MR. VIJAYKAR: Thank you, your Honor.

9 - - -

10 CROSS-EXAMINATION

11 By Mr. Vijaykar:

12 Q. Good morning, Mr. Williams.

13 A. Good morning.

14 Q. I don't think we have had a chance to
15 meet before, but my name is Nikhil Vijaykar, and I am
16 an attorney with the Environment Law & Policy Center.

17 A. Nice to meet you.

18 Q. I am going to -- go ahead.

19 A. I was saying nice meeting you, sir.

20 Q. It's nice to meet you as well. I am
21 going to try not to repeat anything that you've
22 already been asked, but I apologize if there is a
23 little bit of overlap here as I expect that there
24 will be.

25 I am going to start with your background

1 really briefly, Mr. Williams. Now, I understand that
2 you have a degree in engineering technology, but you
3 are not a licensed engineer, correct?

4 A. That's correct.

5 Q. Okay. Fair to say you have an
6 engineering background?

7 A. At a much earlier stage in my life.

8 Q. Okay. Okay. Now, moving to your role at
9 the OCC, I know that you've held a couple of roles at
10 Consumers' Counsel, but your current role is that of
11 utility consumer policy expert, correct?

12 A. That is correct.

13 Q. And that job requires you to be familiar
14 with policies that affect residential customers?

15 A. It does.

16 Q. It also requires you to be familiar with
17 utility programs that affect residential consumers,
18 correct?

19 A. Yes, to a certain extent, not every
20 program obviously.

21 Q. Fair enough. In particular I understand
22 from your deposition that you are an expert on the
23 benefits of those policies and programs to
24 residential customers, correct?

25 A. My expertise extends to identifying

1 benefits, making sure there are benefits that come
2 from programs.

3 Q. Okay. Thank you. You have your
4 testimony available to you, correct?

5 A. I do.

6 Q. Okay. That's what I am going to be
7 focusing on so we can just keep that -- if you can
8 just keep that pulled up, that would be helpful and
9 help us move along.

10 A. I have a hard copy of it here so.

11 Q. Perfect. Mr. Williams, I am going to ask
12 you to look at page 10 of your testimony. And
13 specifically on that page I am looking at lines 6
14 through 11. Now, let me know when you're there.

15 A. I'm there.

16 Q. Now, I am going to paraphrase, but bear
17 with me here, you say here that the smart thermostat
18 provision in the settlement has nothing to do with
19 DP&L providing the core functionality of providing
20 safe, reliable, and reasonably priced electric
21 service. That's correct, right?

22 A. That is correct.

23 Q. Okay. I am going to ask you a couple of
24 questions about smart thermostats. So, Mr. Williams,
25 are you familiar with smart thermostats?

1 A. I'm not familiar with them at any kind of
2 a technical level. I'm familiar with smart
3 thermostats that one might see at -- at a Lowe's,
4 Home Depot, something like that.

5 Q. Okay. Have you ever used one?

6 A. I have not used one.

7 Q. Do you know when smart thermostats were
8 invented?

9 A. No, I don't.

10 Q. Okay. And you don't know if they were
11 invented before 2009, correct?

12 A. Yeah. I don't know when they were
13 created. Smart thermostats were not addressed in the
14 settlement that occurred in the ESP I. There was no
15 mention of a smart thermostat. I don't know if it
16 existed or not.

17 Q. Okay. Do you know when smart thermostats
18 became available in Ohio?

19 A. Certainly over the last couple of years
20 or so.

21 Q. Okay. Now, you understand, Mr. Williams,
22 that smart thermostats are different than traditional
23 thermostats, correct?

24 A. Yes.

25 Q. And smart thermostats are called smart

1 because they have functionalities that are more
2 advanced than a traditional thermostat, correct?

3 A. That's my understanding.

4 Q. Okay. Let's talk about their
5 capabilities really briefly. Keeping in mind that
6 you are not a -- you've testified that you are not a
7 technical expert on thermostats.

8 A. Thank you for that.

9 Q. Smart thermostats are capable of
10 modifying a customer's cooling or heating load,
11 correct?

12 A. I believe that's -- could be one function
13 of it, kind of the traditional load control.

14 Q. Okay. So fair to say that smart
15 thermostats are capable of shifting the customer's
16 cooling or heating load from one part of the day to
17 another, yes?

18 A. These are things that I have heard about
19 them, yes.

20 Q. Okay. Would you agree that smart
21 thermostats are capable of making a customer's load
22 more flexible?

23 A. I've never -- I would be speculating. I
24 have never particularly looked into that question.

25 Q. Okay. And I won't ask you to speculate,

1 Mr. Williams. Now --

2 A. I don't know.

3 Q. Would you agree that smart thermostats
4 are capable of helping customers save energy?

5 A. I believe that that is marketed as one of
6 the purposes for them. Kind of goes well beyond my
7 testimony which is on this settlement document though
8 and what was proposed as part of DP&L's distribution
9 modernization plan.

10 Q. Okay. But I just want to make sure --

11 A. I don't believe they were included there.

12 Q. I apologize. I didn't mean to cut you
13 off there.

14 A. Thank you.

15 Q. And I understand what you're saying, but
16 I just want to make sure that we're clear here that
17 do I understand you correctly to believe or take the
18 position that smart thermostats have the capability
19 of helping customers save energy?

20 A. Yes. I think that they could be helpful
21 under certain circumstances but also -- but the
22 question for this settlement is, you know, should a
23 utility be -- you know, the rebates for them and
24 whether or not DP&L should have an involvement in
25 that and whether or not the value of -- of whatever

1 benefits they provided to parties is worth this
2 program.

3 Q. Thank you, Mr. Williams.

4 MR. VIJAYKAR: But, your Honor, at this
5 time I would move to strike everything that the
6 witness said starting with the question for this -- I
7 believe that the wording after that was the question
8 for this settlement is.

9 EXAMINER SCHABO: Basis?

10 MS. O'BRIEN: Your Honor --

11 MR. VIJAYKAR: Sorry. I missed that if
12 there was a question.

13 EXAMINER SCHABO: I was just asking for
14 your rationale to -- to --

15 MR. VIJAYKAR: Yeah. Your Honor, the
16 rationale is that the -- it's nonresponsive to the
17 question. The question was about what the capability
18 of the smart thermostat is, not about anything
19 related to the questions before the Commission when
20 it's considering the settlement.

21 EXAMINER SCHABO: Ms. O'Brien, your
22 response?

23 MS. O'BRIEN: I was just going to ask if
24 the court reporter could possibly read back the
25 question.

1 EXAMINER SCHABO: Ms. Gibson, could you
2 read back the question, please.

3 (Record read.)

4 EXAMINER SCHABO: Motion to strike is
5 granted.

6 MR. VIJAYKAR: Thank you, your Honor.

7 Q. (By Mr. Vijaykar) And, Mr. Williams,
8 sticking here with capabilities for a minute, would
9 you agree that smart thermostats are capable of
10 helping customers reduce their demand?

11 A. I believe that's one of the advertised
12 features.

13 Q. Okay. And in particular smart
14 thermostats are capable of helping customers reduce
15 their demand during system peak, correct?

16 A. It could be. It's not something I've
17 looked at. I'm not testifying as an expert on smart
18 thermostats.

19 Q. Okay. But you are testifying as an
20 expert on the benefits associated with residential
21 customer programs, correct?

22 A. Yes, I am.

23 Q. Okay.

24 A. But -- but my understanding of the
25 distribution modernization plan that was agreed to in

1 the ESP III, there was no reference of smart
2 thermostats and that's -- this became an addition of
3 the SGP 1, part of a modification that occurred of
4 the original distribution modernization plan.

5 Q. I am going to return to your testimony
6 for -- for a minute here, Mr. Williams. And we're
7 actually not moving at all. We are back on page 10,
8 still on line 6 through 11. And that's where you
9 say --

10 A. Which page is that, sir?

11 Q. Still on page 10, Mr. Williams, and on
12 line 6 through 11.

13 A. Okay. Yes.

14 Q. And again, I'm just referring you over to
15 the same -- same section of your testimony there
16 where you say that "smart thermostat programs that
17 have nothing to do with DP&L providing the core
18 functionality of providing safe, reliable, and
19 reasonably priced electric service." So we've talked
20 a little bit about what smart thermostats can do. I
21 want to talk to you about those core functionalities
22 that you mentioned.

23 A. Okay.

24 Q. So you agree, Mr. Williams, that the
25 company is responsible for building and maintaining

1 distribution grid infrastructure?

2 A. Yes, I am.

3 Q. Okay. And when I say distribution grid
4 infrastructure, you understand that to include
5 substations, transformers, feeders, and other similar
6 equipment, correct?

7 A. Yes, many of the same types that was part
8 of what was considered as part of Smart Grid Phase 1.
9 I'm sorry. That's part of what was considered as
10 part of the PowerForward.

11 Q. Okay. In carrying out this
12 responsibility, Mr. Williams, the company spends
13 money on building and maintaining the distribution
14 grid infrastructure, correct?

15 A. Yes.

16 Q. And fair to say generally the company
17 seeks to recover the costs of its spending on the
18 grid through its ratepayers, yes?

19 A. It depends on what type of, you know,
20 grid infrastructure we're talking about. You know, a
21 utility's responsibility -- electric utility's
22 responsibility is generally a line that's defined as
23 being at the meter, and so the core functionality of
24 providing electric service to the meter is generally
25 what a utility would be involved in.

1 Q. Okay. So as a general matter, you
2 believe the money that the company spends building
3 this infrastructure, the distribution grid
4 infrastructure recovers it through its ratepayers,
5 correct?

6 A. Yes.

7 Q. So the price of electric service depends
8 in part on what the company spends on its
9 distribution infrastructure, correct?

10 A. Yes.

11 Q. Similarly, is it fair to say that the
12 price of electric service depends in part on the
13 company's spending on power supply?

14 A. Like -- are you talking about like for
15 supply of the SSO service?

16 Q. Yeah. I am referring to -- yeah, I'm
17 referring to spending on generation, on power
18 generation.

19 A. Yeah. Well, I mean, to the extent there
20 is SSO, I mean, Ohio is a retail state, so a lot of
21 these functions are going to be competitively
22 provided by others.

23 Q. Right. Okay. Let's talk about
24 distribution infrastructure a little bit and then we
25 can return to generation and the SSO. Are you

1 familiar with the concept of peak demand,
2 Mr. Williams?

3 A. At a very, very high level.

4 Q. Okay. Then we'll stay -- we'll stay at
5 that level. As a general matter then, would you
6 agree that the distribution grid is built to meet
7 peak demand?

8 A. Yes.

9 Q. Okay. So then you would agree that the
10 components of the distribution system such as
11 distribution feeders are designed to meet peak
12 demand, correct?

13 A. It's designed to meet the needs of
14 customers, yes.

15 Q. Okay. Let me ask you a question about
16 peak hours. Would you agree that, all else equal, if
17 customers use less energy at peak, that it relieves
18 the stress on the distribution grid?

19 A. It could. It may. I've seen nothing
20 like that though in DP&L's application for a
21 distribution modernization plan to show that
22 that's -- that type -- that was a consideration for
23 that when it proposed its -- its distribution
24 modernization plan nor is it defined or supported in
25 the settlement.

1 Q. I understand, Mr. Williams, but I do
2 want -- I do want to focus on what -- what happens
3 during peak demand and what is capable and not on
4 what is in the company's application for this
5 particular line of questioning. Just so we're clear,
6 as a general matter, we've said and you've testified
7 you would agree that the company has to build grid
8 infrastructure that has sufficient capacity to meet
9 peak demand, correct?

10 A. That is correct.

11 Q. Okay. And so if customers use less
12 energy at peak as a general matter, would you agree
13 that it relieves wear and tear on grid components?

14 MS. O'BRIEN: Your Honor, I am going to
15 object to this line of questioning. It's getting far
16 beyond the scope of Mr. Williams' testimony. Yeah.

17 MR. VIJAYKAR: Can I respond, your Honor?

18 EXAMINER SCHABO: You may.

19 MR. VIJAYKAR: Your Honor, Mr. Williams
20 is an expert on utility consumer programs. That is
21 what I am talking about. He's also testified that he
22 is an expert on the benefits of those programs. That
23 is what this line of questioning is getting at and,
24 frankly, if Mr. Williams doesn't know the answer to
25 my question, then he can just say that.

1 MS. O'BRIEN: And, your Honor, I would
2 just add that Mr. Williams may be an expert on a
3 variety of different topics but his -- but his
4 testimony for purposes of this proceeding is whether
5 or not the settlement violates regulatory principles
6 and practices in Ohio, and Mr. Vijaykar's questioning
7 is far beyond that scope.

8 EXAMINER SCHABO: Your objection is
9 overruled. Mr. Williams testified in page 10 that
10 smart thermostat programs have nothing to do with
11 DP&L providing core functionality, providing safe,
12 reliable, and reasonably priced electric service, and
13 that statement is subject to cross.

14 Mr. Vijaykar, please continue.

15 MR. VIJAYKAR: Thank you, your Honor.

16 Q. (By Mr. Vijaykar) Mr. Williams, would you
17 agree with the premise if we reduce peak demand, that
18 over time the utility may need to invest less money
19 in the grid?

20 A. That's possible.

21 Q. Okay. So coming at it from a slightly
22 different angle, all else equal, as load increases,
23 the utility must invest more money in the grid to
24 accommodate that load, correct?

25 A. All things equal, there could be

1 additional investment, very speculative.

2 Q. Okay. Well, we've talked about the grid,
3 Mr. Williams. Let's talk about generation for a
4 second. Do you agree that energy that customers
5 use -- let me withdraw that question and start again
6 so it's not garbled.

7 Do you agree that the energy that
8 customers use at peak costs more than -- than the
9 energy that's consumed offpeak?

10 A. Are you talking about for like a Standard
11 Service Offer customer?

12 Q. Just -- just in -- in general would you
13 agree that the energy that customers use at peak.

14 A. My understanding is pricing at peak can
15 be higher than pricing at nonpeak.

16 Q. Okay.

17 A. But I think for customers generally that
18 are served on the Standard Service Offer, they are
19 generally paying the same rate.

20 Q. Would you agree running peaker plants
21 causes consumers to pay more on their bills?

22 A. I assume if peakers were required,
23 potentially that could rise -- raise the cost. But
24 again, this is -- Ohio is a retail electric state,
25 and so I don't think you can ignore also the

1 competitive suppliers that are also providing
2 generation service.

3 Q. Fair enough. Are you familiar with
4 demand response programs, Mr. Williams?

5 A. I myself have never specifically worked
6 with them, just heard a -- a very high level what
7 they are intended to do.

8 Q. Okay. I am not going to be asking
9 specifically about residential demand response
10 programs, but is it fair to say that these
11 residential demand response programs help customers
12 use less energy during peak times?

13 A. I don't know. I'm not aware of that.

14 Q. Do you know whether OCC supports the
15 concept of demand response programs?

16 A. I don't know.

17 Q. And do you know whether smart thermostats
18 can be used to lower customers' thermostats as a part
19 of demand response programs?

20 A. I believe that's one of the touted
21 benefits.

22 Q. Okay. Now, Mr. Williams, I am going to
23 switch gears here for a second, and I am going to ask
24 you about Smart Grid or grid modernization
25 deployments more generally. And for this particular

1 set of questions, I would like you to look at page 2
2 of your testimony. And on that page, I am at lines
3 11 through 13 and please let me know when you get
4 there.

5 A. I'm there.

6 Q. Okay. Now, here you make clear that
7 you've been involved in several different utilities'
8 Smart Grid deployment-related proceedings, correct?

9 A. Yes.

10 Q. Now, those Smart Grid deployments, each
11 comprise several separate Smart Grid technology
12 proposals, correct?

13 A. Common across all of them has been the
14 advanced -- the AMI meters, distribution automation,
15 Volt/VAR optimization, and the communications
16 infrastructure to go along with it.

17 Q. Okay.

18 A. Other variation -- there can be other
19 variations on other applications that are occurring
20 through those as well, but the core functionality and
21 really what I am addressing in my testimony is that
22 that core function for getting meters, some improved
23 reliability, the Volt/VAR into the field.

24 Q. Okay.

25 A. Beyond a lot of these types of things

1 would also be -- it can go beyond specifically
2 what -- what I intend to convey in my testimony.

3 Q. So let me make sure I understand you.
4 You are stating that there are other technology
5 components in these Smart Grid deployments beyond
6 what you're calling the core functionalities,
7 correct?

8 A. Well, I'm familiar with like some of the
9 energy efficiency programs that, you know, have been
10 going on as well. And that I hear the discussion in
11 my collaborative meetings, for example, about
12 programs that are being -- that were being funded
13 through some of the energy efficiency programs, and
14 then the Smart Grid programs is the functionality
15 that I'm trying to discuss here.

16 Q. Mr. Williams, I want to ask you about the
17 PowerForward Roadmap, but in order to do that I want
18 to ask you first are you familiar with PowerForward?

19 A. I am.

20 Q. And do you have the PowerForward program
21 available to you? Sorry. Go ahead.

22 A. Yeah. I just wanted to say I do have the
23 document with me.

24 Q. Perfect. You are a step ahead of me.
25 Great. Let me give you a second to pull it up.

1 A. I have it.

2 Q. Okay. Mr. Williams, I am at page 31 of
3 that document. Could you refer to page 31 of that
4 document.

5 A. I'm there.

6 Q. Do you see a paragraph on the left part
7 of that page that begins with "The Commission
8 encourages"?

9 A. Yes, I do.

10 Q. Okay. If you sort of go further down
11 towards the end of that paragraph -- well, I withdraw
12 that question. Let me start again.

13 Do you understand that paragraph to
14 describe generally TOU proposals, in other words,
15 time of use proposals?

16 A. Yes.

17 Q. Okay. If you go a little bit further
18 down that paragraph, could you read the sentence that
19 starts with "The proposal may also include."

20 A. Yes. As part of the PowerForward
21 document, it says "The proposal may also include a
22 rebate program for enabling technologies such as
23 smart thermostats which could be paired with TOU rate
24 offers through the SSO or through CRES provider
25 offerings that use -- utilize time-based pricing."

1 Q. Mr. Williams, could you take a look at
2 page 22 of the same document. And let me know when
3 you're there.

4 A. I'm on page 22.

5 Q. Okay. And, here again, I am going to ask
6 you to look at the left side of the page towards the
7 end of that column at a paragraph that starts with
8 the words "Using storage."

9 A. Okay. I'm at that paragraph.

10 Q. Okay. Could you please read for me the
11 second sentence that starts with the word
12 "Typically."

13 A. "Typically distribution infrastructure
14 upgrades driven by peak demand events that occur are
15 only a few fairly predictable occasions each year."

16 MR. VIJAYKAR: Thank you, Mr. Williams.

17 Your Honor, could I have 2 minutes to
18 confer with co-counsel? I think I'm getting wrapped
19 up here, but I just want to make sure that we're
20 through before I close out.

21 EXAMINER SCHABO: Yes. We will go off
22 the record, but we will not officially take a break.
23 We are off the record.

24 (Discussion off the record.)

25 EXAMINER SCHABO: Let's go back on the

1 record.

2 Mr. Vijaykar, do you have any further
3 cross?

4 MR. VIJAYKAR: No further cross for Mr.
5 Williams, your Honor.

6 Thank you, Mr. Williams.

7 THE WITNESS: Thank you, sir.

8 EXAMINER SCHABO: Thank you,
9 Mr. Vijaykar.

10 Mr. Halso.

11 MR. HALSO: Yes, your Honor. Thank you.

12 - - -

13 CROSS-EXAMINATION

14 By Mr. Halso:

15 Q. Good morning, Mr. Williams.

16 A. Good morning.

17 Q. We haven't met. My name is Joe Halso. I
18 represent the Sierra Club in this proceeding. Nice
19 to meet you.

20 A. Nice meeting you, sir.

21 Q. I have just a few questions for you.
22 Could you turn to page 28 of your direct, please.

23 A. I'm there.

24 Q. Beginning with the Q and A starting at
25 line 16, you offer testimony concerning the electric

1 vehicle rebate program that is a provision of the
2 settlement, correct?

3 A. Yes.

4 Q. And can we agree that if I say "EV,"
5 that's short for electric vehicle?

6 A. That's fine.

7 Q. Okay. And you identified the EV rebate
8 program as a component of a settlement that in your
9 view violates important regulatory principles and
10 practices, correct?

11 A. Yes.

12 Q. Mr. Williams, could you turn to the next
13 page, page 29.

14 A. I'm there.

15 Q. Ending at line 5 you testify that the
16 PUCO has already determined that it does not have
17 jurisdiction over electric vehicle charging services,
18 or EVCS, and as such, the PUCO must reject a
19 settlement that results in DP&L customers paying for
20 EV rebates that are intended to incentivize and
21 promote charging services, correct?

22 A. Yes. I pulled that out of this -- the
23 Commission-ordered investigation that was done I
24 guess last year, midpart of last year.

25 Q. Okay. Just so I'm clear, so when you say

1 the Commission has determined that it does not have
2 jurisdiction over charging services, you are
3 referring to the finding and order by the Commission
4 in its investigation into EV charging services,
5 correct?

6 A. Yes.

7 Q. Okay. Mr. Williams, do you have that
8 finding and order handy? Could you pull that up for
9 me?

10 A. I do not have that document.

11 Q. Okay.

12 MR. HALSO: Your Honor, we have provided
13 this as SC 1 and circulated it prior to hearing.

14 Ms. O'Brien, was that document sent to
15 Mr. Williams?

16 MS. O'BRIEN: I believe so. If not, I
17 will send it to him right now. Hold on just a
18 second. I need to get back online to my other thing.

19 EXAMINER SCHABO: We will go -- we will
20 go off the record until we can get the exhibit pulled
21 up.

22 (Discussion off the record.)

23 EXAMINER SCHABO: Let's go back on the
24 record.

25 We are back on the record. Mr. Halso.

1 MR. HALSO: Thank you, your Honor.

2 Q. (By Mr. Halso) Mr. Williams, you now have
3 the finding and order from the Commission in Case No.
4 20-434-EL-COI in front of you?

5 A. I do.

6 MR. HALSO: Okay. Your Honor, I would
7 like to mark this SC 1, the Commission's finding and
8 order in the matter of the Commission's investigation
9 into electric vehicle charging services in the state
10 entered on July 1, 2020.

11 EXAMINER SCHABO: So marked.

12 (EXHIBIT MARKED FOR IDENTIFICATION.)

13 MR. HALSO: Thank you.

14 Q. (By Mr. Halso) Mr. Williams, I am looking
15 first at the summary here on page 1. Is it fair to
16 say that the finding at the Commission is that an
17 entity in Ohio that provides EV charging services is
18 not supplying like heat or power to consumers in the
19 state and, therefore, is not an electric light
20 company under Ohio law?

21 MS. O'BRIEN: Your Honor, I would just
22 object to the extent that the Commission's order
23 speaks for itself.

24 EXAMINER SCHABO: Mr. Halso, do you have
25 a response to that?

1 MR. HALSO: Your Honor, stating that I
2 have a common starting place with Mr. Williams'
3 understanding of the order which he references and
4 relies on in his testimony to draw a conclusion that
5 the Commission must reject this settlement. He's
6 testified that it bears on the electric vehicle
7 program at issue in this proceeding.

8 EXAMINER SCHABO: Objection is overruled.
9 Continue, Mr. Halso.

10 MR. HALSO: Could I have the question
11 read back.

12 (Record read.)

13 A. Yeah. I mean, I think that would require
14 a legal conclusion. I'm not -- don't know that I am
15 the proper witness to address what that would --
16 exactly how a light company would be defined.

17 Q. Mr. Williams, as a matter of policy, is
18 the finding I just quoted to you your understanding
19 of this Commission order?

20 A. From a policy standpoint, yes.

21 Q. To illustrate in more basic terms, the
22 Commission is saying that if you have a 7-Eleven in
23 Ohio, and I install a charging station available to
24 the public, I'm not magically transformed into a
25 utility regulated by the PUCO, correct?

1 A. Correct.

2 MS. O'BRIEN: I would object to that,
3 your Honor, on the grounds that mischaracterizes what
4 the Commission says in its order. And again, the
5 Commission's order speaks for itself.

6 MR. HALSO: I think the witness may have
7 already answered, your Honor. I would just say I was
8 trying to illustrate in more helpful terms what this
9 order is saying, but I will withdraw the question.

10 EXAMINER SCHABO: Thank you, Mr. Halso.

11 Q. (By Mr. Halso) Mr. Williams, can you take
12 a minute and identify for me where in the
13 Commission's order the Commission establishes a
14 policy that would prohibit an electric distribution
15 utility from establishing an EV rebate program that's
16 funded by its customers?

17 MS. O'BRIEN: Again, your Honor, object
18 on the grounds that the order speaks for itself.

19 EXAMINER SCHABO: Objection overruled.

20 A. The -- if you look at the Commission
21 decision, paragraph B, for example, the Commission is
22 saying that it -- it is -- the charging services are
23 not -- again, I am just going to try to do this
24 more -- I am not doing it from a legal standpoint,
25 just purely from a policy standpoint, that there --

1 that EV charging stations are not determined to be
2 public utilities or an electric light company. And
3 my point would be and if that's the case, then the
4 Commission shouldn't be approving EV charging
5 stations or aspects of it as part of a settlement.

6 Q. Mr. Williams, the Commission in its
7 finding in this order, does it refer explicitly to
8 the role for electric distribution utilities with
9 respect to electric vehicle charging services?

10 A. Can you point me to an area?

11 Q. Sure. Looking still at page 1, paragraph
12 1, in the summary.

13 A. Which -- which section, sir? You broke
14 up a little bit for me.

15 Q. My apologies. Page 1, paragraph 1, the
16 summary.

17 A. And your question is?

18 Q. In -- in its finding does the Commission
19 refer explicitly to the role of electric distribution
20 utilities with respect to electric vehicle charging
21 services?

22 A. I read the last sentence specifically
23 saying "Consequently, the Commission's jurisdiction
24 does not extend to the entity's provision of electric
25 vehicle charging service."

1 Q. Mr. Williams, does it refer explicitly to
2 the electric distribution utilities and their role
3 with respect to electric vehicle charging services?

4 A. I think that would just be a legal -- I
5 don't see it in that paragraph. If you want to refer
6 me to a -- something more specific, I don't see it in
7 that paragraph, but again, I'm not -- I'm not
8 representing -- I'm just looking at this from a
9 policy standpoint. The Commission says it doesn't
10 have jurisdiction. That's totally consistent with my
11 testimony.

12 Later in this order the Commission
13 specifically talks about these services as being
14 after the meter services. And so that's why I raised
15 the issue but I would also say, sir, EV charging
16 services were -- were not part of the agreement in
17 the ESP III. That -- that called for DP&L to file a
18 distribution modernization plan.

19 MR. HALSO: Your Honor, I would ask to
20 strike the witness's testimony beginning with and
21 referring to the agreement in the ESP as
22 nonresponsive to the question asking about the single
23 paragraph in this Commission order.

24 EXAMINER SCHABO: I am going to deny the
25 motion to strike. I think Mr. Williams just answered

1 your question to the best of his ability.

2 MR. HALSO: Thank you, your Honor.

3 Q. (By Mr. Halso) Mr. Williams, your view,
4 as a matter of policy, is that the implication of the
5 Commission's jurisdictional finding is that electric
6 distribution utilities cannot be involved with
7 charging services, correct?

8 A. I believe that the -- my response is the
9 settlement is that there can be implications and this
10 was discussed within the PowerForward document as
11 well. There can be implications of EV charging and
12 EV charging services on the electric distribution
13 system. But as I said in my settlement, the PUCO
14 must reject a settlement that results in customers
15 paying for EV rebates. And this is -- because it's
16 not a jurisdictional -- it's not jurisdictional for
17 the PUCO to approve this. It's an after the meter
18 service, and the utility's responsibility ends at the
19 meter.

20 Q. Are you aware, Mr. Williams, that the
21 Commission explicitly states in this order that it
22 does not address EDU involvement in the development
23 of electric vehicle charging services?

24 A. I believe I've seen that, although I
25 haven't looked for it here at this moment, but I

1 think these are things to be decided in the future,
2 not now.

3 Q. Thank you, Mr. Williams. I am asking
4 about this order because you testified that the
5 Commission must reject this settlement as a result of
6 this order. Could you turn to page 14 of this
7 finding and order.

8 A. I'm on page 14.

9 Q. Okay. I just want to orient us. You see
10 a letter marking the Section B Commission decision?

11 A. I do.

12 Q. Okay. Could you please turn now to page
13 18.

14 A. I'm there.

15 Q. I'll represent to you we are still in the
16 same section of the Commission decision here. I will
17 refer you to page 34 at the bottom of the page.
18 Could you please read that paragraph aloud.

19 A. The entire paragraph?

20 Q. Yes, please.

21 A. Okay. "Finally, the comments also
22 consisted of vigorous debate among the parties
23 concerning the appropriate level of EDU involvement
24 in the development of the EV charging stations market
25 and EV infrastructure. The Commission recognizes

1 that issues throughout the EVCS, including ensuring a
2 sustainable development in EV market through the
3 electrification of travel corridors, mindful
4 investments in distribution infrastructure, and
5 protection against potential market deficiencies may
6 necessitate involvement by EDUs. However, the
7 Commission will not address EDU -- EDU involvement in
8 this order."

9 Q. Okay. EVCS stands for electric vehicle
10 charging services, correct?

11 A. That's my understanding.

12 Q. And EDUs stands for electric distribution
13 utilities, correct?

14 A. That's correct.

15 Q. DP&L is an EDU, correct?

16 A. That is correct.

17 Q. Okay. At the time you prepared your
18 testimony, were you aware that the Commission order
19 to which you cited for the conclusion of the
20 Commission must reject the settlement and the EV
21 rebate program expressly stated it was not rendering
22 an opinion as to EDU involvement in EVCS?

23 A. The Commission also on page 15, I
24 believe, talks --

25 Q. Mr. Williams, I am just asking about this

1 paragraph and your awareness at the time you prepared
2 your testimony.

3 A. Yes, I am aware of it. I was aware of
4 that paragraph.

5 Q. Okay.

6 A. And put it in the context of the whole
7 order is what I was responding to and my issue isn't
8 the order. I'm addressing the settlement.

9 Q. You acknowledge, Mr. Williams, that the
10 Commission is not rendering a decision with respect
11 to the EDU involvement in EV charging services in
12 this order, correct?

13 MS. O'BRIEN: Again, your Honor, I am
14 going to object. The Commission order speaks for
15 itself.

16 EXAMINER SCHABO: The objection is
17 overruled. Mr. Williams can explain his
18 understanding of the order on which he used to give
19 an expert opinion if he -- he can give his
20 explanation.

21 A. Yes. And my explanation would be that
22 the settlement -- the settlement itself stems from --
23 this settlement stems from a distribution
24 modernization plan that was structured in the pre --
25 in the ESP III settlement and that settlement it was

1 required that, you know, certain aspects -- certain
2 technologies needed to be provided as part of that
3 distribution modernization plan. EV charging
4 services were not one of them. The Commission could
5 decide if they wanted to approve this settlement,
6 they could, but I believe that these are after the
7 meter services that -- that are -- go well beyond
8 what the Commission should address in this
9 proceeding.

10 Q. Yes or no, Mr. Williams, do you
11 acknowledge that the Commission's finding and order
12 in this investigation does not render a decision with
13 respect to EDU involvement in electric vehicle
14 charging services?

15 A. No. And I believe that in PowerForward
16 and this document it's -- it remains clear that there
17 could be EDU involvement.

18 Q. Okay. Having acknowledged that, do you
19 maintain your testimony that the Commission must
20 reject the EV program and settlement as a direct
21 result of the Commission's findings and order in this
22 case?

23 A. This is my testimony.

24 MR. HALSO: Okay. Thank you,
25 Mr. Williams.

1 Nothing further, your Honor. I renew the
2 motion for admission of the findings and order marked
3 as SC 1 at the appropriate time.

4 EXAMINER SCHABO: Thank you. We'll
5 address exhibits at the end. Are there any
6 additional intervening parties that have
7 cross-examination for Mr. Williams outside of Staff
8 that's an intervening party?

9 Seeing and hearing no one, Mr. Beeler, do
10 you have any cross-examination for Mr. Williams?

11 MR. BEELER: No questions, your Honor.

12 EXAMINER SCHABO: Ms. O'Brien, do you
13 have any redirect for Mr. Williams?

14 MS. O'BRIEN: Yes, I will, your Honor.
15 May we talk a break so that I can review my notes and
16 confer with the client?

17 EXAMINER SCHABO: Yes. But before we do
18 that, can I get a nonbinding estimation of your
19 redirect?

20 MS. O'BRIEN: It will probably be about
21 15 minutes. It won't -- it will be brief.

22 EXAMINER SCHABO: Okay. I would like to
23 try to finish Mr. Williams before lunch so let's --
24 we are going to push lunch back a little bit from
25 12:30. We will take a break until 12:20. We will

1 then come back on the record, and we will finish up
2 with Mr. Williams.

3 MS. O'BRIEN: I'm sorry, your Honor. Did
4 you say until -- I'm sorry, did you say until 12:20?

5 EXAMINER SCHABO: Yeah. Is 4 minutes
6 enough? Do you need additional time?

7 MS. O'BRIEN: If we could possibly --
8 that was a lot of cross-examination. If I could
9 possibly have until at least 12:30, that would be
10 appreciated.

11 EXAMINER SCHABO: Okay. In which case we
12 will go ahead and break for lunch now. We will come
13 back from lunch at 1:30. We will finish with
14 Mr. Williams and move on to Mr. Duann. Is that
15 acceptable to everyone?

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

17 EXAMINER SCHABO: All right. We are off
18 the record until 1:30.

19 (Thereupon, at 12:17 p.m., a lunch recess
20 was taken.)

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Friday Afternoon Session,
January 15, 2021.

- - -

EXAMINER SCHABO: Why don't we go back on
the record.

We are back on the record. It's 1:30.
We are back from lunch.

Ms. O'Brien, did you have some redirect
for Mr. Williams?

MS. O'BRIEN: Yes, your Honor, I do.

EXAMINER SCHABO: Proceed when you are
ready.

MS. O'BRIEN: Okay.

- - -

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

REDIRECT EXAMINATION
By Ms. O'Brien:

Q. Mr. Williams, do you recall questions
from Mr. Wygonski with respect to your testimony
appearing at pages 32 and 33 of your direct testimony
regarding concessions and the settlement to
residential customers?

A. Yes.

1 Q. Okay. And could you just please clarify
2 your testimony there with respect to commercial and
3 industrial customers.

4 A. Yes. As I specified in my testimony, my
5 analysis was based upon benefits that have been
6 provided specifically for residential customers, but
7 the amount would be much greater if -- if the full
8 payoff, that is, that that was provided to the
9 commercial and industrial customers were also
10 included.

11 Q. Okay. Thank you. Now, do you also
12 recall questions from Mr. Wygonski regarding the
13 \$267 million cap that is under the settlement that's
14 part of Smart Grid Plan Phase 1?

15 A. I do.

16 Q. Okay. And do you recall his questions
17 asking you whether or not that amount was lower than
18 the 8 plus million dollars that were initially
19 proposed in the application filed in this case?

20 A. I do recall that, yes.

21 Q. Okay. And just so the record is clear,
22 your understanding is that Smart Grid Plan Phase 1
23 under the settlement is for a four-year period; is
24 that correct?

25 A. Yes. It's for a four-year period,

1 whereas, the full distribution modernization plan as
2 filed by DP&L included much more equipment and cost
3 recovery over a much longer period of time.

4 Q. Okay. Thank you very much. Now, I am
5 going to shift to questions from DP&L and
6 Mr. Ireland. Specifically do you recall questions
7 from Mr. Ireland regarding your attendance at one of
8 the technical/settlement conferences in this
9 proceeding?

10 A. I do recall that.

11 Q. Okay. And without divulging any specific
12 settlement discussions, can you tell me whether you
13 raised the issue regarding recovery of costs through
14 the Infrastructure Investment Rider?

15 A. Yes. OCC has consistently raised issues
16 with using the IIR Rider to recover costs that came
17 out of the ESP III Smart -- Smart Grid program or
18 Smart Grid rider that you can't simply just rename
19 something that are totally different terms that were
20 involved in setting each of those stipulations,
21 different parties. OCC, for example, was a party in
22 the ESP I.

23 Q. Okay. Thank you. Okay. And do you also
24 recall questions from Mr. Ireland regarding the
25 bullet points that you list on pages 6 and 7 of your

1 testimony?

2 A. I do.

3 Q. Okay. And I believe he asked you whether
4 or not you thought these items mentioned in the
5 various bullet points were beneficial?

6 A. That is correct.

7 Q. Do you recall that testimony?

8 A. I do.

9 Q. Now, does your testimony in response to
10 those questions change your opinion that the
11 settlement violates regulatory principles and
12 practices in Ohio?

13 A. No, it does not.

14 Q. Thank you. Now, do you recall questions
15 from Mr. Ireland regarding DP&L's November 25, 2019,
16 tariff filing in this case -- or, rather, in the ESP
17 I case?

18 A. Yes, I do.

19 Q. Okay. And do you also recall questions
20 from Mr. Ireland regarding whether OCC filed comments
21 regarding those tariffs or an application for
22 rehearing of the order approving those tariffs?

23 A. I do recall those questions.

24 Q. Okay.

25 MS. O'BRIEN: Your Honor, I would like to

1 mark what's been previously noted as OCC Exhibit 21.
2 And this is DP&L's November 25, 2019, filing in the
3 ESP I case.

4 EXAMINER SCHABO: Sorry. I lost my
5 spreadsheet. You said it was previously marked as
6 OCC 21?

7 MS. O'BRIEN: Yes. Identified on our
8 list of potential exhibits, rather.

9 EXAMINER SCHABO: That's ESP I Notice of
10 Filing of Tariffs?

11 MS. O'BRIEN: Yes.

12 EXAMINER SCHABO: So marked.

13 (EXHIBIT MARKED FOR IDENTIFICATION.)

14 Q. (By Ms. O'Brien) Okay. Mr. Williams, you
15 have this document available to you?

16 A. I do.

17 EXAMINER SCHABO: I'm sorry.
18 Ms. O'Brien, I need to take a pause. You are not
19 viewable by me right now. You are having a low
20 bandwidth issue.

21 MS. O'BRIEN: Oh, okay. Do you see me
22 now?

23 EXAMINER SCHABO: I do not see you.

24 MS. O'BRIEN: Okay. I see myself. I see
25 everyone else.

1 EXAMINER SCHABO: Okay. Hold on. Just a
2 second.

3 Let's go off the record for a minute,
4 Karen.

5 (Recess taken.)

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

8 Ms. O'Brien, we can hear you and see you
9 again so let's go ahead and proceed. If we need to
10 start with reading from the record, we can do that,
11 but I think you were just marking OCC 21.

12 MS. O'BRIEN: OCC 21, yes. Okay.

13 Q. (By Ms. O'Brien) Okay. So, Mr. Williams,
14 do you have this document in front of you?
15 Mr. Williams?

16 EXAMINER SCHABO: Mr. Williams, I believe
17 you are on mute. Now we can hear you.

18 THE WITNESS: Is this better?

19 EXAMINER SCHABO: Yes.

20 THE WITNESS: Okay.

21 Q. (By Ms. O'Brien) So do you have this
22 document available to you?

23 A. Yes, I do.

24 Q. Okay. And can you tell me what it is?

25 A. Yes. This is a filing by Dayton Power

1 and Light Company. It was called a Notice of Filing
2 Proposed Tariffs.

3 Q. Okay.

4 A. This is dated November -- go ahead. I'm
5 sorry.

6 Q. Oh, go ahead. I apologize. You can
7 finish.

8 A. November 25, 2019.

9 Q. Okay. Now, this is the document that
10 Mr. Ireland was referring to in his questions?

11 A. It was.

12 Q. Okay. And on the first page, can you
13 read the first sentence of the last paragraph on the
14 first page?

15 A. I can. It says "The following riders and
16 tariffs from DP&L's most recent Standard Service
17 Offer will be implemented as they existed in 2017
18 before the Commission's decision in ESP III." And
19 then it refers to -- and it then refers to an
20 Infrastructure Investment Rider, Infrastructure
21 Investment Rider, D29.

22 Q. Okay. And can you tell me, did OCC rely
23 on that statement as a true and accurate
24 representation by DP&L?

25 A. Oh, absolutely. We relied upon DP&L's

1 representation at the time that this tariff existed
2 even though it didn't.

3 Q. Okay. And can you tell me after the
4 settlement was filed in this case, did you
5 investigate DP&L's tariffs to determine whether the
6 Infrastructure Investment Rider was filed?

7 A. Yes, I did. I went through several years
8 of tariff filings, ended up back at tariff filings
9 that were made on June 29, 2009. This -- this was
10 filed in Case 08-1094-EL-SSO and also in the standard
11 tariff -- DP&L tariff filing which is an
12 89-6004-EL-TRF.

13 MS. O'BRIEN: Okay. And, your Honor, at
14 this time I would also like to mark what has been
15 previously identified as OCC 63. And that is the
16 June 29, 2009, tariff filings by DP&L -- or, I'm
17 sorry. Yeah, it's a letter dated June 29, 2009, and
18 it has DP&L's tariffs.

19 EXAMINER SCHABO: So marked.

20 (EXHIBIT MARKED FOR IDENTIFICATION.)

21 Q. (By Ms. O'Brien) Now, Mr. Williams, do
22 you have this document available to you?

23 A. I do.

24 Q. Okay. And is -- based on your review of
25 this document, did you see it -- the Infrastructure

1 Investment Rider in this document?

2 A. No, I didn't. This -- the tariff makes
3 no reference to an Infrastructure Investment Rider.

4 Q. And it also doesn't make reference to an
5 Infrastructure Investment Rider placement holder
6 tariff or placeholder tariff?

7 A. No. The tariff didn't exist after the
8 ESP I, and certainly the types of provisions that
9 would be agreed upon in a settlement such as
10 establishing placeholder privileges certainly didn't
11 exist.

12 MS. O'BRIEN: Okay. Thank you,
13 Mr. Williams. I have no further questions at this
14 time.

15 EXAMINER SCHABO: Thank you, Ms. O'Brien.
16 We will start with Mr. Ireland. Do you
17 have any recross based on Ms. O'Brien's redirect?

18 MR. IRELAND: No, your Honor. But I
19 would move the admission of DP&L Exhibit 12.

20 EXAMINER SCHABO: I promise I will not
21 forget this time, but we will get to that after
22 everybody is done with their questioning.

23 MR. IRELAND: Okay.

24 EXAMINER SCHABO: Mr. Wygonski, did you
25 have any recross?

1 MR. WYGONSKI: Yes, your Honor, very
2 briefly.

3 EXAMINER SCHABO: Okay.

4 - - -

5 RECROSS-EXAMINATION

6 By Mr. Wygonski:

7 Q. Mr. Williams, I just wanted to clarify
8 only the amount -- the lower amount associated with
9 Smart Grid Phase 1 under the settlement is being
10 requested to be recovered from customers at this time
11 through this proceeding, correct?

12 A. Yes.

13 Q. Okay. And I wanted to go back to your
14 reference to 9.5 million that you discussed with
15 Ms. O'Brien as referencing residential benefits
16 provided by DP&L through the settlement. First, we
17 turn to page 32, line 18, of your testimony. You
18 stated DP&L is excepting \$9.5 million, correct?

19 MS. O'BRIEN: Your Honor, I am going to
20 object as beyond the scope of redirect. I just asked
21 Mr. Williams to clarify his testimony with respect to
22 the commercial and industrial customers, not
23 specifically addressing the 9.5 million.

24 MR. WYGONSKI: Your Honor, that's what I
25 am getting at here. If I can just continue, I just

1 wanted to clarify how much is being spent and where
2 that money is actually going.

3 EXAMINER SCHABO: Why don't you get to
4 your next question.

5 MR. WYGONSKI: Thank you.

6 Q. (By Mr. Wygonski) And so you're
7 referencing provisions in the settlement that say
8 DP&L will use shareholder dollars to provide benefits
9 to residential customers, correct?

10 MS. O'BRIEN: Again, I am going to
11 object.

12 A. Yes.

13 MS. O'BRIEN: This is beyond the scope of
14 redirect. These questions he could have brought out
15 on his cross.

16 EXAMINER SCHABO: I'll allow this one.

17 Mr. Williams, I believe you started to
18 answer it. I don't know if you finished.

19 THE WITNESS: I am not sure I -- I
20 haven't finished. I am not sure I know the question
21 at this point.

22 EXAMINER SCHABO: Karen, would you reread
23 the question, please.

24 (Record read.)

25 A. That is correct.

1 Q. (By Mr. Wygonski) Okay. Mr. Williams,
2 are you aware that one of OCC's other witnesses
3 quantified the benefits to both residential and
4 commercial and industrial customers as totaling
5 \$7.5 million per DP&L's 10-Q report?

6 MS. O'BRIEN: Objection, beyond the scope
7 of redirect.

8 MR. WYGONSKI: With all due respect, your
9 Honor, Ms. O'Brien was the one who brought up
10 commercial and industrial versus residential
11 allocation of that money, and I am just trying to
12 clarify where that money is actually going based on
13 Mr. Williams' testimony today and Mr. Hill's
14 testimony previously.

15 MS. O'BRIEN: Your Honor, I did not bring
16 up allocation at all. I asked Mr. Williams to
17 clarify his testimony.

18 EXAMINER SCHABO: And his testimony was
19 that the amount would be much greater if it included,
20 so I'll allow this question.

21 Karen, if you could reread the question
22 for Mr. Williams.

23 (Record read.)

24 A. No, I'm not.

25 MR. WYGONSKI: All right. Thank you,

1 your Honor. If I could just have a minute here, I
2 just want to make sure I don't have anything else.

3 EXAMINER SCHABO: Sure. We will go off
4 the record, but we will not take a break.

5 (Discussion off the record.)

6 EXAMINER SCHABO: Back on the record.

7 If you would repeat your representation,
8 please.

9 MR. WYGONSKI: Your Honor, I have no
10 further questions for the witness. Thank you.

11 EXAMINER SCHABO: Thank you.

12 MR. WYGONSKI: Thank you, Mr. Williams.

13 THE WITNESS: Thank you.

14 EXAMINER SCHABO: Ms. Fleisher, did you
15 have any additional recross -- or any recross?

16 MS. FLEISHER: Nothing, your Honor.

17 EXAMINER SCHABO: Mr. Vijaykar?

18 MR. VIJAYKAR: No, your Honor, no
19 recross.

20 EXAMINER SCHABO: Thank you.

21 Mr. Halso?

22 MR. HALSO: No, your Honor, thank you.

23 EXAMINER SCHABO: Thank you. Do you
24 have -- let's see, let's start with exhibits.

25 Ms. O'Brien, if you would like to start

1 with yours.

2 MS. O'BRIEN: Sure. At this time I would
3 like to move for admission of OCC 6 which is the
4 direct testimony of James D. Williams.

5 EXAMINER SCHABO: Are there any
6 objections?

7 MR. WYGONSKI: Yes, your Honor. I would
8 like to object based on the -- the provisions as set
9 forth in our motion to strike earlier.

10 MS. O'BRIEN: Oh, I'm sorry. I'm sorry.

11 EXAMINER SCHABO: No.

12 MS. O'BRIEN: I didn't want to cut you
13 off. No. I was just going to say my -- my response
14 to the motion to strike still stands. Mr. Williams
15 is testifying as a regulatory expert and is -- can
16 testify with respect to his knowledge as to Ohio
17 regulatory principles and practices and that's what
18 he is testifying to in this case.

19 EXAMINER SCHABO: Thank you. My ruling
20 on the motions to strike still stands, but I do note
21 your objection as to that, Mr. Wygonski.

22 Hearing no other objections, DP&L
23 Exhibit 6 will be admitted.

24 MR. IRELAND: I think it's actually OCC
25 Exhibit 6.

1 EXAMINER SCHABO: I'm sorry, so OCC
2 Exhibit 6.

3 (EXHIBIT ADMITTED INTO EVIDENCE.)

4 MS. O'BRIEN: Okay. So next we would --
5 OCC would move for admission of OCC Exhibit 21 which
6 is Dayton Power and Light Company's Notice of Filing
7 of Proposed Tariffs.

8 EXAMINER SCHABO: Any objections?

9 Hearing none, OCC 21 will be admitted.

10 (EXHIBIT ADMITTED INTO EVIDENCE.)

11 MS. O'BRIEN: And, finally, I would like
12 to move for omission at OCC 63 which is the June 29,
13 2009, DP&L tariff filed in Case No. 08-1094-EL-SSO,
14 89-06 -- I'm sorry, 89-6004-EL-TRF.

15 EXAMINER SCHABO: Any objection?

16 Hearing none, OCC Exhibit 63 will be
17 admitted.

18 (EXHIBIT ADMITTED INTO EVIDENCE.)

19 EXAMINER SCHABO: Mr. Ireland.

20 MR. IRELAND: Thank you, your Honor. We
21 would move the admission of OC -- or DP&L Exhibit 12
22 which is the December 18, 2019, second finding and
23 order of the PUCO.

24 EXAMINER SCHABO: Are there any
25 objections?

1 MS. O'BRIEN: No objection from OCC.

2 EXAMINER SCHABO: Not seeing or hearing
3 any others, DP&L Exhibit 12 will be admitted.

4 (EXHIBIT ADMITTED INTO EVIDENCE.)

5 EXAMINER SCHABO: Mr. Halso.

6 MR. HALSO: Thank you, your Honor. We
7 renew our motion for admission of what's been marked
8 Sierra Club Exhibit 1, the Commission's finding and
9 order in 20-434-EL-COI.

10 EXAMINER SCHABO: Any objection?

11 Hearing and seeing none, Sierra Club
12 Exhibit No. 1 will be admitted.

13 (EXHIBIT ADMITTED INTO EVIDENCE.)

14 EXAMINER SCHABO: Thank you,
15 Mr. Williams.

16 THE WITNESS: Thank you very much, your
17 Honor.

18 EXAMINER WILLIAMS: Sorry. I had one
19 clarification. Is it OCC 63, correct? Is that what
20 you had, Karen? The last exhibit we admitted.

21 MS. O'BRIEN: Yes, that's what I marked
22 it as.

23 COURT REPORTER: Yes.

24 EXAMINER WILLIAMS: Thank you. Sorry
25 about that.

1 EXAMINER SCHABO: Judge Williams, I hand
2 this over to you.

3 EXAMINER WILLIAMS: Thank you, Judge
4 Schabo.

5 I will invite OCC to call their next
6 witness.

7 MS. O'BRIEN: And I believe OCC will be
8 calling Dr. Daniel Duann.

9 MR. SCHMIDT: Dr. Duann, you have been
10 promoted to the role of panelist. Please enable your
11 audio and video.

12 MS. O'BRIEN: And, your Honor, I believe
13 Attorney Christopher Healey is going to be presenting
14 him.

15 EXAMINER WILLIAMS: Thank you,
16 Ms. O'Brien.

17 MR. HEALEY: Actually it's going to be
18 Ms. Wilson, so can we go off the record for a minute?

19 EXAMINER WILLIAMS: Attorney Healey, you
20 are barely decipherable, but I did hear off the
21 record, so we will go off the record and let us know
22 when you are able to help us connect.

23 (Discussion off the record.)

24 EXAMINER WILLIAMS: Mr. Healey, I don't
25 recall if you have called your next witness or not.

1 MR. HEALEY: I don't believe. OCC calls
2 Dr. Daniel Duann.

3 EXAMINER WILLIAMS: Dr. Duann, my name is
4 Mike Williams. I'm one of the Administrative Judges
5 attending to this matter. I will begin by swearing
6 you in. Would you raise your right hand.

7 (Witness sworn.)

8 EXAMINER WILLIAMS: Attorney Healey.

9 MR. HEALEY: Yes, your Honor. OCC would
10 like to mark two Exhibits. The first one, OCC
11 Exhibit 4, is the direct testimony of Daniel Duann,
12 Ph.D., filed in these cases on December 17, 2020.

13 EXAMINER WILLIAMS: So marked.

14 (EXHIBIT MARKED FOR IDENTIFICATION.)

15 MR. HEALEY: And the second exhibit would
16 be OCC Exhibit 5. That's the supplemental testimony
17 of Daniel Duann, Ph.D., filed in these proceedings on
18 January 11, 2021.

19 EXAMINER WILLIAMS: So marked.

20 (EXHIBIT MARKED FOR IDENTIFICATION.)

21 MR. HEALEY: Thank you.

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DANIEL DUANN, Ph.D.

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

DIRECT EXAMINATION

By Mr. Healey:

Q. Dr. Duann, do you have a copy of your two
pieces of testimony in front of you today?

A. Yes, I do.

Q. And do you have any -- let's start with
OCC Exhibit 4, your December initial testimony. Do
you have any corrections to that testimony this --
this afternoon?

A. No.

Q. And OCC Exhibit 5, your supplemental
testimony, do you have any corrections to that
testimony?

A. Yes, I do have one correction. And that
would be page 15, line 5. And the word "438 million"
should be changed to "43.8 million."

Q. Thank you, Dr. Duann. And with that one
correction, if I were to ask you the same questions
in your two pieces of testimony today, would your
answers be the same?

A. Yes.

Q. And are all of your answers in those two

1 pieces of testimony true and accurate to the best of
2 your knowledge?

3 A. Yes, they are.

4 MR. HEALEY: Thank you.

5 At this time, your Honor, OCC moves for
6 the admission of OCC Exhibits 4 and 5, and Dr. Duann
7 is available for cross-examination.

8 EXAMINER WILLIAMS: Thank you, Attorney
9 Healey.

10 On behalf of DP&L, who would like to
11 begin for cross-examination?

12 Oh, sorry. Preliminary matter.

13 MR. WYGONSKI: Yes, your Honor. Would
14 now be a good time to make motions to strike?

15 EXAMINER WILLIAMS: Yes, Attorney
16 Wygonski.

17 MR. WYGONSKI: Thank you. I have
18 multiple portions of his testimony that I will be
19 requesting to be stricken from his direct testimony,
20 the initial testimony for December 17, 2020. They
21 are all the same rationale, so I will provide
22 references and a description of both subject to the
23 motion and then provide the grounds.

24 EXAMINER WILLIAMS: Okay.

25 MR. WYGONSKI: On page -- page 7, lines

1 12 through 14, the first sentence of that paragraph
2 Dr. Duann makes a statement about what the Commission
3 and the Supreme Court has found to be lawful which is
4 a legal conclusion, but it's also factually correct
5 and, therefore, prejudicial.

6 And page 22, the sentence beginning on
7 line 3 as "as" and ending with the word "basis" on
8 line 14, that is -- I'm sorry, beginning on line 3
9 and ending on line 14, that -- in that sentence
10 Dr. Duann gives a legal opinion of the lawfulness of
11 the RSC.

12 EXAMINER WILLIAMS: Are you actually
13 concluding at the end of line 12?

14 MR. WYGONSKI: Oh, shoot. I'm sorry,
15 yes. Your Honors, these portions of Dr. Duann's
16 testimony constitute improper legal opinions under
17 Rule 702. Dr. Duann is not a lawyer, and his
18 testimony lays no foundation that would otherwise
19 qualify him as an opinion -- qualify him as an expert
20 by his education, knowledge, training, expertise, or
21 skill to offer a legal opinion.

22 Additionally, your Honor, Dr. Duann's
23 legal conclusions should be stricken as unduly
24 prejudicial and misleading under Rule 403. These
25 portions of his testimony inappropriately

1 characterize prior rulings by the Commission and the
2 Supreme Court to arrive at a legal conclusion. Such
3 testimony is not admissible if its probative value is
4 substantially outweighed by the danger of unfair
5 prejudice, confusion of the issues, or of misleading
6 a fact finder.

7 Your Honors, Dr. Duann has no basis for
8 giving such legal opinions, and the section of his
9 direct testimony should be accordingly stricken.
10 Thank you.

11 EXAMINER WILLIAMS: Thank you, Attorney
12 Wygonski. I'll ask do you have any objections to his
13 supplemental testimony?

14 MR. WYGONSKI: I do not.

15 EXAMINER WILLIAMS: Thank you.

16 And then I will ask if any other parties
17 want to join in the objection?

18 MR. SHARKEY: DP&L will join in the
19 motion to strike, your Honor.

20 EXAMINER WILLIAMS: Okay.

21 MS. WHITFIELD: Kroger joins it as well,
22 your Honor.

23 MR. LONG: IEU-Ohio joins as well, your
24 Honor.

25 MS. COHN: OEG joins as well, your Honor.

1 EXAMINER WILLIAMS: Okay. As we did this
2 morning, I am going to take 5 minutes. We will come
3 back at 2:15.

4 And we can go off the record. Thank you.
5 (Discussion off the record.)

6 EXAMINER WILLIAMS: Mr. Healey, go ahead
7 and provide the response now. Thank you.

8 MR. HEALEY: Yes, thank you, your Honor.
9 As with Mr. Williams and other witnesses in this
10 case, Dr. Duann is testifying as a regulatory expert.
11 He has decades of experience testifying before the
12 PUCO numerous times on these issues, and he is
13 obviously not giving a formal legal opinion, but he
14 is giving his understanding of the rulings. And some
15 of it is just a description of the historical things
16 that have occurred before the Supreme Court.
17 Therefore, he is qualified and certainly can answer
18 any questions anyone might have on cross-examination.

19 With respect to Mr. Wygonski's unfair
20 prejudice basis for his motion to strike, that type
21 of objection typically applies when there is a jury
22 involved. Certainly the Commission is sophisticated
23 and knowledgeable and would not be misled by
24 Dr. Duann's testimony as it can interpret it based on
25 its regulatory experience as well so there is no

1 danger of unfair prejudice to anyone any more than
2 there would be in any other instance. Thank you.

3 EXAMINER WILLIAMS: Thank you, Attorney
4 Healey. I have what I need. We will come back at
5 2:15. Thank you.

6 (Recess taken.)

7 EXAMINER WILLIAMS: All right. We are
8 back on the record.

9 It's 2:15. We took a break to address
10 motions to strike two portions of Dr. Duann's
11 testimony on multiple bases including that they
12 provided legal opinions and that they provided
13 testimony that was deemed to be misleading and
14 dangerous, in excess of its probative value.

15 At this time the Administrative Law Judge
16 denies the motions to strike the testimony. While
17 the testimony is certainly subject to
18 cross-examination, particularly in regard to whether
19 the court and Commission have struck RSC as afforded
20 in the testimony, the fact is that Dr. Duann is
21 testifying as a regulatory expert, and his opinion
22 concerning the framework is, we feel, probative
23 relative to his ultimate conclusions he offers here
24 in this case.

25 So the parties are not to cite any

1 portion of that testimony as being an accepted fact
2 in this case, but we will allow the testimony to
3 stand and not be stricken at this juncture.

4 Any other preliminary matters?

5 Okay. On behalf of DP&L, who is going to
6 do cross-examination?

7 MR. SHARKEY: That would be me, your
8 Honor.

9 EXAMINER WILLIAMS: Mr. Sharkey, please
10 proceed.

11 MR. SHARKEY: Thank you, your Honor.

12 - - -

13 CROSS-EXAMINATION

14 By Mr. Sharkey:

15 Q. Dr. Duann, as you know, my name is Jeff
16 Sharkey, and I represent DP&L in this matter.
17 Initially it's true, isn't it, that you don't offer
18 any opinions regarding Smart Grid in this matter?

19 A. That is not true.

20 Q. It's true, isn't it, you don't offer any
21 opinions regarding whether DP&L's Smart Grid plan has
22 a cost/benefit analysis?

23 A. That's not true either. You know, as
24 stated in my direct testimony, I did --

25 EXAMINER WILLIAMS: I'm sorry, Dr. Duann.

1 Knowing this is probably going to go on for a bit,
2 Micah, can you have Dr. Duann join on the phone?

3 MR. SCHMIDT: Dr. Duann, if you look in
4 your Webex window on your computer screen to the top
5 left, you'll see "File, Edit, Share, View," and then
6 a tab called "Audio & Video."

7 THE WITNESS: Yes.

8 MR. SCHMIDT: If you click on the "Audio
9 & Video" tab, the first option --

10 EXAMINER WILLIAMS: Karen, we are off
11 record, right? Please go off.

12 (Discussion off the record.)

13 EXAMINER WILLIAMS: Okay. We are back on
14 the record.

15 Before we had a 7- or 8-minute technical
16 issue, I believe that Attorney Sharkey was -- had
17 proposed a question regarding the Smart Grid plan.
18 You can either reask it, or we can have the court
19 reporter read it back.

20 MR. SHARKEY: I will reask it, your
21 Honor.

22 EXAMINER WILLIAMS: Thank you.

23 Q. (By Mr. Sharkey) Dr. Duann, do you offer
24 any opinions regarding whether or not DP&L's Smart
25 Grid proposal passes a cost/benefit analysis?

1 A. No.

2 Q. Okay. And, similarly, you don't offer
3 any opinions regarding whether DP&L's ESP I passes
4 the more favorable in the aggregate test, correct?

5 A. That is correct.

6 Q. You also don't offer any opinions
7 regarding whether or not DP&L's ESP I passes the
8 prospective significantly excessive earnings test,
9 correct?

10 A. I did not testify on that.

11 Q. You do offer opinions regarding whether
12 or not DP&L passes the retrospective SEET for 2018
13 and 2019, right?

14 A. Yes.

15 Q. Okay. Let me ask you some questions
16 about that. In your supplemental testimony would you
17 please turn to page 4.

18 A. Yes. I'm there.

19 Q. Okay. Starting on line 7, you quote a
20 portion of the SEET statute, correct?

21 A. Correct.

22 Q. Okay. And there's a beginning clause
23 that says with respect to the provisions that are
24 included in an electric security plan under this
25 section, the Commission shall consider, following the

1 end of each annual period of plan, if any such
2 adjustments resulted in excessive earnings. Do you
3 see that, sir?

4 A. I did see that.

5 Q. Okay. And it's true, isn't it, that in
6 your SEET analysis you did not make any adjustments
7 to count for -- to account for revenue that was not
8 caused by an ESP, right?

9 A. Not -- that's not true. I believe in my
10 direct testimony I say that I accept the two
11 adjustments proposed by DP&L in its original SEET
12 application.

13 Q. Sir, do you have a copy of your
14 deposition handy?

15 A. I can put it on my computer screen.

16 Q. If you will turn to page 32, please. Are
17 you there?

18 A. I have such problem with my computer.
19 Okay. Yes, I'm on page 32.

20 Q. Okay. Starting on line 20, at your
21 deposition I asked you the question "Just so we are
22 clear, you didn't propose to make any adjustments
23 under the clause that says if any such adjustments
24 resulted in excessive earnings, correct," and you
25 answered "Correct." Did I read that accurately, sir?

1 A. You read that accurately.

2 Q. Now --

3 MR. HEALEY: Objection.

4 EXAMINER WILLIAMS: Basis?

5 MR. HEALEY: Well, two things. First,
6 he -- Mr. Sharkey attempted to impeach the witness
7 while reading only part of his answer from the
8 deposition transcript instead of reading the entire
9 answer which is, therefore, misleading. And, second
10 of all, the question and answer that he seeks to use
11 to impeach is different than the question he asked
12 today during the cross-examination, and for that
13 reason it is improper impeachment as well. Thank
14 you.

15 EXAMINER WILLIAMS: Attorney Sharkey.

16 MR. SHARKEY: Yes, your Honor. The
17 question that I had asked him before impeaching him
18 was whether he made any adjustments to account for
19 revenue that was not caused by the ESP which relates
20 to that exact clause. And so it's directly
21 impeaching, and I read enough of his answer from the
22 deposition to be correct.

23 The fact that he continued to give me a
24 speech after answering my question, I don't think I
25 have any obligation to read that into the record when

1 I've already shown he's given a directly inconsistent
2 answer.

3 EXAMINER WILLIAMS: Okay. We will let --
4 I will let the question stand. I will let his
5 response stand. I will also let him add any response
6 he wants to add on the record now if he has any.

7 THE WITNESS: Can I answer the question?

8 EXAMINER WILLIAMS: Yes, sir.

9 A. Okay. Yes. I think Mr. Sharkey actually
10 asked me two questions. I think the question he
11 asked today is whether I made any adjustment to
12 the -- for anything that is, you know, not related to
13 the ESP, and my answer is I did. I made those two
14 one-time adjustments, one-time event adjustments.
15 And on the deposition I think Mr. Sharkey asked
16 whether I make any adjustment to those ESP
17 provisions, those adjustments, those rates, those
18 whatever included in the ESP. And my answer is I did
19 not make any adjustment regarding the provisions,
20 terms, and that included in the ESP.

21 And also I think I -- I explained it
22 look -- when you do look at totality of the earnings
23 of that utility and that year under certain ESP so I
24 don't -- I don't see there's any inconsistency with
25 what -- my deposition and my answer today because

1 Mr. Sharkey is asking two different questions as far
2 as I -- my understanding.

3 EXAMINER WILLIAMS: Attorney Sharkey, I
4 will give you some liberty to ask more succinct
5 questions if you prefer.

6 MR. SHARKEY: Sure.

7 Q. (By Mr. Sharkey) Just to clarify then,
8 Doctor, the clause on page 4 of your supplemental
9 testimony that begins on page -- the page 4, line 7,
10 running through page 10, excessive earnings, you
11 understand that the phrase "any such adjustments"
12 refers to the earlier phrase there, "provisions that
13 are included in an ESP."

14 MR. HEALEY: Objection.

15 EXAMINER WILLIAMS: Basis?

16 MR. HEALEY: I believe Mr. Sharkey said
17 starting on page 4 running through page 10, so I'm
18 not sure what he's referring to. That's six whole
19 pages.

20 MR. SHARKEY: Let me clarify. If I said
21 that, your Honor, I misspoke.

22 Q. (By Mr. Sharkey) Starting on page 4, line
23 7, there is a clause that I have already read into
24 the record, Mr. Duann, and it runs through page 4,
25 line 7, the clause towards the end, "any such

1 adjustments resulted in excessive earnings," you
2 understand to be a reference to the earlier clause in
3 that phrase "provisions that are included in the
4 ESP," right?

5 MR. HEALEY: Objection. I apologize,
6 your Honor. Mr. Sharkey, this time you said line 7
7 through line 7, so it's still not clear what you are
8 referring to.

9 EXAMINER WILLIAMS: Attorney Healey, you
10 are correct.

11 Attorney Sharkey, if you could just
12 carefully cite the language you are referencing on
13 page 4.

14 MR. SHARKEY: Sure. Page 4, line 7,
15 through page 4, line 10. And on line 10 ending with
16 the words "excessive earnings."

17 EXAMINER WILLIAMS: Okay. You want to
18 phrase your question with that citation in mind?

19 MR. SHARKEY: Sure.

20 Q. (By Mr. Sharkey) You understand that the
21 phrase towards the end of that paragraph meaning "any
22 such adjustments resulted in excessive earnings"
23 refers to the earlier phrase in particular that is
24 "provisions that are included in an ESP," correct?

25 A. My understanding is it's the "any such

1 adjustments" on line 9 referred to the provisions --
2 or the provisions in the electric security plan.

3 Q. Okay. And then, so we're clear, you
4 don't propose to make any adjustments under that
5 clause that says if any such adjustments resulted in
6 excessive earnings, correct?

7 A. Actually I don't -- I don't quite -- I
8 don't quite exactly understand what do you mean. You
9 know, I think this provision -- many different
10 provisions in electric security plan and when I'm
11 doing the SEET test, I did not make any adjustment to
12 those provisions. Those rates, those provisions,
13 they are already approved by the Commission and
14 that's part of the -- that's part of the ESP and that
15 provision contributed to the totality of that earned
16 earning in that particular period of time.

17 Q. Okay. So we're clear, we're clear,
18 Doctor, the clause I've read that begins on page 4,
19 line 7, and runs through page 4, line 10, ending in
20 "excessive earnings," you in your SEET analysis did
21 not make any adjustments associated with that
22 language, correct?

23 A. I didn't -- you know, I said it several
24 times. I don't know what you mean by associated with
25 that language. I've already said several times I

1 don't make adjustments to the provision of the
2 electric security plan. I don't make adjustment for
3 the rates, you know, the rate it is, what it is, and
4 they -- what earning resulted from rate. It is what
5 earning it is.

6 EXAMINER WILLIAMS: Dr. Duann, I believe
7 Attorney Sharkey is entitled to a succinct answer to
8 his question.

9 Attorney Sharkey, can you phrase it
10 again?

11 Doctor, I am going to ask that you give
12 him a yes or no with minimal explanation.

13 Q. (By Mr. Sharkey) Dr. Duann, starting on
14 page 4, line 7 through line 10, ending with the
15 phrase "excessive earnings," it's true, isn't it, you
16 don't make any adjustments in your SEET analysis
17 dealing with that language?

18 MR. HEALEY: I'm going to object, your
19 Honor. The issue is that the phrase -- phases that
20 Mr. Sharkey is using like dealing with that language,
21 associated with that language, those are vague and
22 that's what's causing Dr. Duann to have to explain
23 why it's not just a yes or no answer. So my
24 objection is to the form of the question and vagary
25 of Mr. Sharkey's language.

1 EXAMINER WILLIAMS: Attorney Sharkey, do
2 you want to tighten that up for us?

3 MR. SHARKEY: Sure.

4 Q. (By Mr. Sharkey) Once again, Doctor,
5 starting on page 4, line 7 through line 10, ending
6 with "excessive earnings," you do not make any
7 adjustments in your analysis that relates to or
8 results from the language in that portion of the
9 statute, right?

10 A. I cannot make it any clearer.

11 Q. Dr. Duann. Dr. Duann, yes or no, did you
12 make any adjustments or not, sir?

13 THE WITNESS: I don't understand his
14 question, sir.

15 EXAMINER WILLIAMS: So you don't
16 understand whether you made any adjustments in regard
17 to that statutory SEET provision?

18 THE WITNESS: This statutory provision
19 talks nothing about adjustment. The adjustment is
20 referring to the ESP provision, and I have to say
21 several times I don't make any changes or any
22 adjustments regarding those ESP provisions. The
23 rates, the terms, whatever they are in the ESP, I did
24 not make changes to them.

25 EXAMINER WILLIAMS: Mr. Sharkey.

1 MR. SHARKEY: I'll move on, your Honor.

2 Thank you.

3 Q. (By Mr. Sharkey) Similarly, page 4 of
4 your supplemental testimony, line 13, refers to
5 "publicly traded companies, including utilities, that
6 face comparable business and financial risk." It's
7 true, isn't it, that you haven't attempted to
8 identify any such companies?

9 A. Not -- no.

10 Q. When you say "no," you are agreeing that
11 that's true.

12 A. I have not identified any comparable
13 company because it's not needed for the 2018 and 2019
14 analysis.

15 Q. Then, Doctor, on -- then, Doctor, on page
16 4, starting on line 14, there's a clause that says
17 "with such adjustments for capital structure as may
18 be appropriate." And I understand from your
19 testimony that you believe that clause does permit
20 adjustment to the capital structure for comparable
21 companies, correct?

22 A. Not adjustments for the company --
23 comparable company. It's that risk factor that's
24 lacking in comparable group of companies if you want
25 to select a comparable group of companies.

1 Q. So you haven't made any adjustments in
2 your testimony associated with that clause on lines
3 14 through 15 of your testimony, right?

4 A. Because I'm not doing a comparable -- I
5 am not selecting a comparable group of companies, so
6 I don't need to do that.

7 Q. You also, although you don't quote it,
8 understand that the SEET statute permits the
9 Commission to consider future committed capital
10 investments in the state, correct?

11 A. Correct.

12 Q. Okay. And you don't make any adjustments
13 associated with that clause either, correct?

14 A. Actually I don't know what the adjustment
15 you are referring to.

16 Q. That's the question, is there anything in
17 your testimony where you make an adjustment
18 associated with future capital commitments in this
19 state?

20 A. Well, my answer would be I considered
21 that and I -- however, my -- I do not think it is
22 reasonable to adjust the amount of refund to
23 customers based on that consideration.

24 Q. You believe that one of the purposes of
25 the SEET statute is to ensure that customers do not

1 pay excessive charges, correct?

2 A. Correct.

3 Q. Okay. And you are aware that in 2018 and
4 2019, DP&L had the lowest rates in the state,
5 correct?

6 A. I think that in my testimony I -- I say
7 I'm -- I have not made that comparison, so I don't
8 know one way or the other for sure, and I am -- more
9 importantly I -- in my testimony I also explain, you
10 know, the rate you have right now has -- does not
11 demonstrate you have or you do not have excessive
12 earnings.

13 MR. SHARKEY: Your Honor, I would move to
14 strike beginning with the phrase and more
15 importantly. He strayed away from the subject of my
16 question which was whether DP&L has the lowest rates
17 in the state. He can put up whether that's important
18 or not through redirect.

19 EXAMINER WILLIAMS: Attorney Healey, any
20 response?

21 MR. HEALEY: Yes. Dr. Duann was just
22 giving context to his response and what it means, or
23 what Mr. Sharkey is implying in asking about whether
24 he knows that DP&L's rates are the lowest or not.

25 EXAMINER WILLIAMS: To the extent he was

1 providing context in regard to a possible implication
2 of the question, I find it to be excessive, so we'll
3 strike the portion as requested. You can take it
4 back up on redirect if you so choose.

5 MR. SHARKEY: Thank you, your Honor.

6 Q. (By Mr. Sharkey) Dr. Duann, let me ask
7 you about DP&L's DMR. You understand that DP&L's
8 Garavaglia and Malinak opined that the DMR should be
9 excluded from DP&L's earnings?

10 A. I'm aware of that.

11 Q. Okay. You disagree. You believe that
12 the DMR should be included in DP&L's earnings for the
13 prospective SEET case, right?

14 A. Yes. That's my position.

15 Q. Okay.

16 A. It should be included.

17 Q. Okay. You agree with me that a utility
18 is generally free to use its revenues for any
19 purpose, correct?

20 A. Yes, generally, yes.

21 Q. Okay. Do you have a copy --

22 A. Unless -- unless it either involves
23 anything -- you know, I think generally, yes.

24 Q. Do you have a copy of DP&L's ESP III
25 stipulation available to you, Doctor?

1 MR. SHARKEY: Your Honor, it was OCC
2 Exhibit 16, I believe.

3 EXAMINER WILLIAMS: Attorney Sharkey, are
4 you aware when that came in?

5 MR. SHARKEY: I don't know which day that
6 came in, your Honor. I apologize.

7 MR. HEALEY: That is OCC 10, your Honor,
8 if that helps.

9 MR. SHARKEY: Oh, did I have the number
10 wrong?

11 EXAMINER SCHABO: I believe that came in
12 with Ms. Schroder, and it is, as Mr. Healey said, OCC
13 10.

14 MR. SHARKEY: Couldn't read my own
15 handwriting. That's embarrassing.

16 EXAMINER WILLIAMS: We did find that did
17 come in through Ms. Schroder, so it's already been
18 marked and admitted.

19 A. Yes, I have a copy called -- talking
20 about ESP III Amended Stipulation?

21 Q. Yes, Doctor. Could you turn to page 5.

22 A. Yes, I'm at page 5.

23 Q. Okay. And subparagraph B there, I won't
24 read it into the record, but you understand that
25 paragraph required DP&L to use DMR proceeds to pay

1 debt at DP&L and DPL Inc., correct?

2 A. I think that's what it says in the
3 Stipulation.

4 Q. Okay. And then if you would look in your
5 supplemental testimony here page 13, line 6.

6 A. Yes.

7 Q. You say "DP&L's DMR is functionally
8 identical to FirstEnergy's," correct?

9 A. That's correct.

10 Q. Okay. And it's your belief that the
11 Commission required FirstEnergy to use its DMR
12 proceeds to implement grid modernization, correct?

13 A. I didn't quite catch the question.

14 Q. Okay.

15 A. Maybe the court reporter can.

16 Q. I will reask it. It was your belief that
17 in its order authorizing FirstEnergy to implement a
18 DMR that the Commission required FirstEnergy to use a
19 DMR revenue to implement grid modernization, correct?

20 A. I think that's incorrect. I think I
21 would like to be more specific. My recollection of
22 the FirstEnergy's DMR is this DMR is to improve the
23 financial position of FirstEnergy's parent company or
24 unregulated affiliate so that -- so that those EDUs
25 can bother money to do grid modernization.

1 Q. And just so we are clear, it's your
2 specific understanding that the Commission had
3 required FirstEnergy to use the DMR funds to
4 implement grid modernization, right?

5 A. That's my recollection, yes.

6 Q. Okay. And you further recall that
7 FirstEnergy was affirmatively required to implement
8 grid modernization under that Commission order,
9 right?

10 A. That's also my recollection, yes.

11 Q. Okay. Turn, if you would, in your
12 supplemental testimony to page 15. Are you there,
13 Doctor?

14 A. Yes.

15 Q. On that page you're discussing the fact
16 an amount of dividends that DP&L provided to its
17 immediate parent company DPL Inc., correct?

18 A. That's -- yes.

19 Q. And that was during 2018 and 2019 while
20 the ESP III Stipulation was in effect, right?

21 A. That's for 2018 and 2019 when -- when ESP
22 III was in effect and DP&L was collecting the DMR
23 from its customers.

24 Q. And you were aware that the ESP III
25 Stipulation did not restrict DP&L's ability to pay

1 dividends to DPL Inc., correct?

2 A. I think that restriction was not in the
3 Stipulation.

4 Q. And you are not aware of any evidence
5 that DP&L or DPL Inc. made any payments to AES during
6 2018 and 2019, correct?

7 A. I think -- I believe DP&L did not pay any
8 dividend to the -- to AES, and as for the DPL Inc., I
9 have not reviewed it -- its financial statement in
10 great detail, so I don't want to say that. I simply
11 don't know what DPL Inc. did do regarding to the AES.

12 Q. And, Doctor, you are aware that the
13 Commission can adjust the utility's earnings
14 associated with one-time or extraordinary events,
15 correct?

16 A. Are you referring in the context of a
17 SEET?

18 Q. In the context of a SEET, yes.

19 A. The Commission -- well, not -- not at the
20 Commission. I think the company can -- the utility
21 can -- when they make their annual SEET filing, they
22 may make adjustment to their reported earned --
23 reported earnings so that, you know, those one-time
24 events affect -- one-time event can be -- can be
25 taken out for the purpose of the SEET.

1 Q. Okay.

2 A. And usually will pass judgment on that
3 when the Commission agree or disagree or.

4 Q. And you understand that DP&L has taken
5 the position in this litigation that the DMR should
6 be excluded from its earned return as a one-time or
7 extraordinary event, right?

8 A. I think that's in one of the witness's
9 testimony, yes.

10 Q. And you disagree with that position,
11 correct?

12 A. I disagree, right.

13 Q. Okay. Now, do you know whether or not
14 DP&L's DMR was approved under Subsection (B)(2)(h) of
15 the ESP statute?

16 A. I don't know. I may have read what
17 the -- what the Commission when they approved the DMR
18 and -- and when -- you know, but I didn't go back and
19 check. And to me I think that's -- it's part of the
20 order for my analysis because the Commission has
21 already terminated the DMR. The Commission --
22 because in my view the Commission's views, I suppose,
23 are very similar, so I didn't go back and look at
24 initially why.

25 Q. Dr. Duann, other than DP&L and

1 FirstEnergy -- actually strike that.

2 Can you identify any utility in the
3 country besides DP&L and FirstEnergy who's had a
4 rider like the DMR?

5 A. I cannot identify -- identify any other,
6 but I have not read -- I have not reviewed all the --
7 the utilities, you know, in the country whether they
8 have a similar rider. That simply I don't know.

9 Q. Okay.

10 A. No, I cannot give you an example where a
11 singular name or, you know, like the DMR.

12 Q. And you are aware that the DMR for DP&L
13 was in effect between 2017 and 2019, correct?

14 A. The DMR was in effect for 26 months
15 from -- from November 2017 until December of 2019.

16 Q. Let me ask you about AES equity. You are
17 aware that DP&L Witness Garavaglia opines that DP&L's
18 equity base should be adjusted by \$300 million
19 associated with equity investments that AES -- that
20 AES has made to or will be making to help DP&L fund
21 grid modernization?

22 A. I'm aware of that.

23 Q. Okay. And you do agree that the
24 Commission has considered future committed capital
25 investments in past cases, correct?

1 A. Yes. In the past the Commission did
2 consider that.

3 Q. Turn to your Stipulation -- I'm sorry,
4 your supplemental testimony page 19, please.
5 Starting on line 10, you say, and I quote, "there is
6 no linkage between the 2020 and 2021 AES capital
7 investment and the future committed investment in the
8 state by DP&L." Did I read that correctly?

9 A. Yes, you read it correctly.

10 Q. Can you turn, please, to the Stipulation
11 in this case which was previously marked as
12 Stipulating Parties Exhibit 1.

13 A. Actually I do not have it with me. I
14 don't know why. You are talking about the
15 Stipulation in this case, right?

16 Q. That's correct, Doctor.

17 A. Well, I -- I don't have it in front of
18 me. Somehow I did not bring down that copy, but
19 maybe I can go to the e-mail and see if I can.

20 EXAMINER WILLIAMS: Karen, can we go off?
21 (Discussion off the record.)

22 EXAMINER WILLIAMS: We're back on the
23 record.

24 I understand while we were off taking a
25 short break that Dr. Duann was able to access the

1 Stip and is now ready for further cross-examination.

2 Attorney Sharkey.

3 MR. SHARKEY: Yes, thank you, your Honor.

4 Q. (By Mr. Sharkey) Dr. Duann, just to reset
5 where we were before we went on break, I had asked
6 you about page 19 of your testimony, lines 10 and 11,
7 where you said there was no linkage between the AES
8 capital investments and future committed investments
9 in the state by DP&L. Do you recall that?

10 A. Yes.

11 Q. Okay. And so what I would like you to do
12 in the Stipulation is -- that Stipulation in this
13 case, Stipulating Parties Exhibit 1, turn to page 3.

14 A. Yes. I'm there.

15 Q. You've read the Stipulation before,
16 correct?

17 A. Yes.

18 Q. Okay. And page 3 there are a series of
19 whereas clauses. I want to point you to the second
20 one. It says "WHEREAS, the ultimate parent of DP&L,
21 The AES Corporation, provided a capital distribution
22 of 150 million to DP&L, on June 26, 2020, to enable
23 DP&L to improve its infrastructure and modernize its
24 grid while maintaining liquidity. In addition, as
25 more fully described in DP&L's June 17, 2020, 8-K

1 filing, AES has provided a statement of intent to
2 contribute an additional 150 million to DPL or DP&L
3 in 2021 to enable Smart Grid investment." Did I read
4 that accurately, sir?

5 A. Yes, you did.

6 Q. Turn then in your supplemental testimony
7 to page 20.

8 A. Yes. I'm there.

9 Q. On -- on line 6 you say "the \$150 million
10 capital investment by AES is mainly self-serving,"
11 correct?

12 A. Correct.

13 Q. Do you know whether OCC has asserted in
14 prior Commission cases that AES should be making
15 equity investments in DP&L?

16 MR. HEALEY: Objection.

17 EXAMINER WILLIAMS: Basis?

18 MR. HEALEY: Relevance. OCC's standard
19 positions in prior cases would be OCC's legal
20 positions in those cases that are taken for one
21 reason or another which may not be the same reasons
22 that Dr. Duann is testifying in this case today, and
23 without specific reference to a specific case, a
24 vague reference to past cases is not probative in
25 this case.

1 EXAMINER WILLIAMS: I'll let the question
2 stand. You can answer to the extent you know.

3 THE WITNESS: Can I have the question
4 read back, please?

5 EXAMINER WILLIAMS: Sure.

6 Karen, please.

7 (Record read.)

8 EXAMINER WILLIAMS: Doctor, that question
9 is posed to you. I don't know if you understand that
10 or not.

11 THE WITNESS: I understood the question
12 and -- and I'm trying to -- my answer is I don't
13 know. You know, at least I did not make any
14 statement like that for the case I was involved. And
15 whatever the OCC's position in -- in any other cases,
16 that's related to other cases, and what I say here
17 is -- is not -- is true because DP&L filed a rate
18 case in December 2020. And several months before
19 that coincidentally AES decided to make a capital
20 contribution of 150 million to DP&L.

21 And, furthermore, I want to point out
22 that this capital contribution is not made in common
23 stock or anything like that, so it's -- it's --
24 that's capital and AES can take it back any time.

25 MR. SHARKEY: Your Honor, I would move to

1 strike beginning with the phrase what I say here is
2 true. The question was whether or not he knew what
3 OCC's position was in prior cases. After he said
4 that he did not know, everything else was
5 argumentative and volunteering and not responsive to
6 the question.

7 EXAMINER WILLIAMS: I am going to leave
8 the testimony in. To the extent he provided an
9 overbroad response, it was a response to a broad
10 range of questions. I will let you probe further.
11 Certainly going to let Attorney Healey address
12 anything further on redirect. So if you want to ask
13 more questions in response to the response, please
14 feel free.

15 MR. SHARKEY: Actually I don't, your
16 Honor. I will just move on.

17 EXAMINER WILLIAMS: Thank you.

18 Q. (By Mr. Sharkey) Dr. Duann, remember
19 earlier I had asked you about the purposes of the
20 SEET, and you agree with me that a second purpose of
21 the significantly excessive earnings test is ensuring
22 that utility shareholders do not receive
23 significantly excessive earnings, correct?

24 A. I don't believe you asked any question
25 related to that. I think you only asked question

1 whether to protect the customer.

2 Q. I did ask that question and that was one
3 of the purposes of the SEET. My question now is
4 another purpose of the SEET is to ensure that utility
5 shareholders do not receive significantly excessive
6 earnings, right?

7 A. That's correct.

8 Q. Okay. And you understand that before
9 deregulation, DP&L used its generation assets to
10 provide service to its customers?

11 A. You know, when DP&L was an integrated
12 electric utility and it did own generation assets and
13 to provide generation service to its customers.

14 Q. And in that time DP&L's generation assets
15 were included in DP&L's rate base in setting rates
16 for customers, right?

17 A. That's correct.

18 Q. Okay. To be included in rate base, you
19 understand that investments have to be actually made,
20 correct?

21 A. To be -- to be included in a rate base, I
22 think that -- I think that determination is based on
23 a review of a utility's -- both its accounting book
24 as well as its physical facility and also a
25 determination whether those -- if that investment are

1 made prudently or not.

2 Q. And the assets must be used and useful,
3 correct?

4 A. That's correct.

5 Q. Okay. I want to ask you a hypothetical.
6 Suppose a shareholder makes an equity infusion of a
7 million dollars into a utility, and the utility uses
8 that million dollars to invest in the generation
9 asset. If a utility then has -- that's its only
10 asset and it has \$50,000 in earnings, my math is that
11 would be a 5 percent ROE; is that right?

12 A. Okay. Let -- let's come back a little
13 bit. Say for in a particular year when a utility has
14 \$1 million you say in equity?

15 Q. \$1 million in equity and \$50,000 in
16 earnings.

17 A. Yes. And for that particular year that
18 utility has return on equity of 5 percent.

19 Q. Okay. And it's your view that 5 percent
20 would not ordinarily be considered an excessive
21 return for a utility, right?

22 A. I think you are using a hypothetical
23 example. So for hypothetical, I don't know what --
24 what -- you know, what kind of -- what kind of a
25 return the other kind of investment will get; so, you

1 know, I cannot answer that.

2 Q. Okay. You don't know whether a 5 percent
3 ROE would be typically considered excessive or not?

4 A. Well, as I say, you are saying it's a
5 hypothetical 5 percent, so I don't know.
6 Hypothetical, you know, if during a grid depression
7 or something, everybody else is earning 2 percent or
8 1 percent, then 5 percent is suddenly considered
9 excessive. So I think -- so I think -- you know, I
10 think the issue is when you say hypothetical. If
11 it's a hypothetical, then I cannot answer.

12 Q. In your experience have you ever seen a
13 situation where you would have concluded that a
14 5 percent ROE was significantly excessive?

15 MR. HEALEY: Objection. This is asked
16 and answered, your Honor. Also irrelevant. We are
17 going into hypotheticals about whether 5 percent is
18 significantly excessive. That's not an issue in this
19 case. No one is claiming that, so I fail to see the
20 relevance of this new hypothetical.

21 EXAMINER WILLIAMS: It's not been asked
22 and answered, and to the extent that the Doctor wants
23 to parse through the hypothetical, then Attorney
24 Sharkey is allowed to continue asking questions until
25 he gets to the bottom of it.

1 Please proceed. You can answer.

2 A. Well, as I say, if it's a hypothetical, I
3 cannot answer that, whether 5 percent is excessive or
4 not. It depends on the overall economic environment
5 during that hypothetical period.

6 Q. If DP&L had earned a 5 percent ROE in
7 2018 or 2019, would you have considered that to be an
8 excessive ROE?

9 A. Well, now you are talking 2018 or 2019;
10 and, yeah, during that period of time, I would not
11 consider 5 percent ROE to be excessive.

12 Q. Okay. Now, let's suppose that same
13 utility with the million dollars of invest -- a
14 million dollars of equity writes off \$900,000 worth
15 of that asset, so it now has \$100,000 on its books,
16 okay? The utility still owns the same generation
17 asset. And now it earns the same amount, the \$50,000
18 that I had given you previously. That utility would
19 now have an ROE of 50 percent, correct?

20 A. No. I don't think you are using the same
21 example. I think the first example you say it's
22 \$1 million in equity, and then it earned about
23 \$50,000. And what's the second hypothetical you are
24 talking about?

25 Q. Second hypothetical, the utility has

1 written off \$900,000, taken an impairment on the
2 assets, so there is \$100,000 left in equity. The
3 utility has the same asset, and in the year in
4 question it again has \$50,000 in earnings. In that
5 situation, the utility's ROE would be 50 percent,
6 right?

7 A. Well, it is -- it -- if that utility has
8 written off that -- that \$900,000 so it's left with
9 \$100,000, yes, your rate of return would be
10 50 percent and that's what the accounting standards
11 say.

12 Q. Okay. And at least in 2018 and 2019, if
13 DP&L had earned an ROE of 50 percent, would you view
14 that to be excessive?

15 A. Oh, definitely.

16 Q. Okay. So the ROE increased and became
17 excessive just because of the writeoff of the value
18 of the assets, right?

19 MR. HEALEY: Objection.

20 EXAMINER WILLIAMS: I am going to allow
21 that objection to stand. Could you clarify, Attorney
22 Sharkey? I want you to mingle your hypothetical with
23 the actual numbers that are at issue here. Can you
24 be more specific?

25 MR. SHARKEY: I'm sorry, your Honor. I

1 am not sure I understood your instruction so.

2 EXAMINER WILLIAMS: Yeah. I want you to
3 ask the question more specifically.

4 MR. SHARKEY: Okay.

5 Q. (By Mr. Sharkey) Well, in this
6 hypothetical question, the utility's ROE increased
7 significantly simply because the utility had written
8 off \$900,000 worth of the equity associated with that
9 asset, correct?

10 A. Yes. That's correct.

11 Q. Let me move on and ask you some questions
12 about the TCJA. You understand that DP&L Witness
13 Garavaglia opines that DP&L's earnings should be
14 adjusted in 2019 associated with one-time income tax
15 effects caused by the TCJA, right?

16 A. Yes, I am aware of that.

17 Q. Okay. And Mr. Garavaglia is citing to a
18 need by DP&L to address excess deferred taxes on
19 DP&L's books as a result of the TCJA. Are you aware
20 of that as well?

21 A. I think he provided some explanation on
22 that.

23 Q. Okay. You oppose the adjustments related
24 to the TCJA, correct?

25 A. I oppose that particular adjustment

1 proposed by DP&L.

2 Q. Okay. You understand that TCJA was
3 passed by the United States Government, correct?

4 A. Correct.

5 Q. And you would agree with me that any
6 effect that TCJA has upon DP&L was not caused by the
7 ESP statute?

8 A. Yeah. It was not caused by the ESP
9 statute, but it was -- was -- happened during that
10 year. It's out of it -- it's already -- it's part of
11 the earnings.

12 Q. You are not aware of any similar tax
13 reduction by the Federal Government in the last 20
14 years, correct?

15 A. Similar in terms of what?

16 Q. Similar to the TCJA.

17 A. I mean, every tax legislation is
18 different.

19 Q. You understand that the TCJA made a
20 significant cut to the corporate income tax rate,
21 right?

22 A. I understand it caused the tax rate I
23 think it's from 35 percent to 21 percent.

24 Q. Are you aware of any similarly-sized
25 reduction in the corporate income tax rate in the

1 last 20 years?

2 A. I don't know. I cannot answer that
3 question because I have not reviewed every year of
4 tax legislation of the last 20 years.

5 Q. You are aware that DP&L Witness
6 Garavaglia also supports an adjustment in which he
7 subtracts the RSC from DP&L's revenue, correct?

8 A. Correct. What he proposes, yeah.

9 Q. It's true, isn't it, there is no place in
10 your testimony where you did calculations that
11 compared the rates that DP&L received under ESP I to
12 the rates that were in effect under ESP III?

13 A. Based on my experience regarding the SEET
14 implementation in the state of Ohio by the PUCO,
15 there is no need for that calculation because in the
16 past, the PUCO always looked at the total earning or
17 implement the ESP in that particular year and all the
18 utility asks -- calculate is SEET earning based on
19 the total earning including DP&L.

20 So I did not see the need for that, and I
21 did not do that.

22 MR. SHARKEY: Your Honor, I would move to
23 strike everything before I did not do that. I don't
24 think -- my question was simply what's in his
25 calculations. He's free to bring up, I think, on

1 redirect the reasons he did or did not.

2 EXAMINER WILLIAMS: Karen, would you read
3 the question, please.

4 (Record read.)

5 EXAMINER WILLIAMS: Thank you, Karen.

6 I will let the testimony stand. He is
7 entitled to explain what he put in his testimony and
8 why.

9 MR. SHARKEY: Thank you, your Honor.

10 Q. (By Mr. Sharkey) Dr. Duann, let me turn
11 to the SEET threshold. You propose that the III SEET
12 threshold should be 12 percent because that was the
13 amount established under the ESP III Stipulation
14 which was in effect for 2018 and most of 2019, right?

15 A. Right.

16 Q. Okay. Again, if you would, please, turn
17 to the ESP III Stipulation that I believe you have a
18 copy of and was OCC Exhibit 10.

19 A. Yes.

20 Q. Okay. Turn to page 6, if you would.
21 Tell me when you are there.

22 A. Yes.

23 Q. Okay. Page 6, paragraph E, says "Rider
24 DMR revenues shall be excluded from significantly
25 excessive earnings test, SEET, calculations. DP&L's

1 SEET threshold will remain at 12 percent." Do you
2 see that, Doctor?

3 A. Yes. I think it's on the bottom of page
4 6, right?

5 Q. Yes. And you are aware that DP&L Witness
6 Garavaglia says that DP&L would never have agreed to
7 a 12 percent ROE cap if the DMR was to be included in
8 the SEET, right?

9 A. I don't know whether he actually used the
10 word saying DP&L will never, but I think he -- he did
11 say -- he did say -- he did express a similar
12 sentiment.

13 Q. Okay. And you disagreed with him, and
14 you told me that you were not able to identify any
15 relationship between the two sentences in paragraph
16 E, correct?

17 A. Because these two are not related. They
18 are in -- they span E because they are related to C
19 but I -- you know, if -- if the intent of the
20 Stipulation is to bring this together, the
21 Stipulation will say that, but it didn't say that.
22 These are two independent sentences, so I think they
23 are not related.

24 Q. You didn't participate in the
25 negotiations leading to the ESP III Stipulation, did

1 you?

2 A. I think I did. At least I don't know
3 whether I go to every meeting, but I think I was
4 involved in that case.

5 Q. You are also aware that DP&L Witness
6 Garavaglia says the 12 percent threshold should not
7 be enforced because the ESP III Stipulation is no
8 longer in effect, right?

9 A. I think that is another position, that's
10 correct.

11 Q. Okay. And as we just stated, you -- you
12 disagree and believe that because the ESP Stipulation
13 was in effect during 2018 and 2019, the 12 percent
14 cap should be -- the 12 percent threshold should be
15 in force even though the ESP Stipulation is now
16 terminated, right?

17 A. Yes. I say that in my supplemental
18 testimony because during 2018 and 2019, DP&L was
19 operated -- was operating under ESP III, and so the
20 threshold established for -- for ESP III should still
21 be applicable.

22 Q. Okay. Let me explore a little bit
23 whether the Commission can explore -- or can enforce
24 a terminated Stipulation. I am going to go back in
25 time a little bit. You are aware that the Commission

1 terminated the DMR in 2019, correct? Let me strike
2 that. Let me rephrase it.

3 You are aware that the Commission
4 modified DP&L's ESP III in 2019 by terminating the
5 DMR, right?

6 A. The Commission terminated DMR, yeah, near
7 the -- near the end of 2019, that's correct.

8 Q. And in response to that modification, you
9 are aware that DP&L withdrew from and terminated ESP
10 III, right?

11 A. I -- you know, I think DP&L withdrew from
12 the ESP III.

13 Q. Okay. And that had the effect of causing
14 DP&L to revert back to ESP I, right?

15 A. To the -- yes, to the rate in effect in
16 2017.

17 Q. Okay. And then looking back again at ESP
18 III, page 6, as we've already discussed, you want the
19 Commission to enforce the sentence that says DP&L's
20 SEET threshold will remain at 12 percent, correct?

21 A. Correct.

22 Q. Okay. But you want the Commission to
23 modify that Stipulation to eliminate the preceding
24 sentence, right?

25 A. My -- that's my recommendation is the

1 Commission should -- should include the DMR revenue
2 in the state calculation based on the Supreme Court
3 decision.

4 Q. So should modify the Stipulation and
5 eliminate that sentence, right? That's your view?

6 A. Well, my view -- my view is the
7 Commission should follow the law.

8 Q. And in your view that would require the
9 Commission to not enforce that prior sentence; is
10 that your view?

11 A. My view is the Commission should include
12 the DMR revenue for SEET and that the SEET threshold
13 should have remained at 12 percent.

14 Q. Okay. So if the Commission modified the
15 ESP Stipulation by eliminating that sentence, the
16 question to you is do you know if DP&L has a right to
17 terminate an ESP in response to a Commission
18 modification?

19 MR. HEALEY: I am going to object, your
20 Honor. And if I could have the question reread
21 before I state the basis to my objection.

22 EXAMINER WILLIAMS: Go ahead, Karen.

23 (Record read.)

24 EXAMINER WILLIAMS: Attorney Healey.

25 MR. HEALEY: Yeah, your Honor, I think

1 Mr. Sharkey is both misstating the witness's
2 testimony because the witness has not testified that
3 the Commission would be modifying ESP -- the ESP III
4 Stipulation by excluding this -- the DMR revenues, he
5 said that it would be implementing a Supreme Court
6 order; and, further, to the extent Mr. Sharkey's view
7 is that by him doing so it would be modifying a
8 Stipulation that is no longer in existence, I think
9 that's a legal question of whether that's actually
10 occurring. So I would object to the form of that
11 question because it's just unclear and legally
12 ambiguous.

13 EXAMINER WILLIAMS: I am going to
14 overrule the objection. He's allowed to answer to
15 the extent he knows.

16 A. I don't know the answer to that because I
17 think right now I am -- that's a very general
18 question, and I think if Mr. Sharkey referred to the
19 ESP III, I think right now Dayton is not under ESP
20 III, so I just don't understand how Dayton can
21 withdraw from ESP III. Or, you know, because it is
22 not under ESP then how can you withdraw it? And,
23 frankly, you know, this is just a legal question and
24 I'm not able to answer that.

25 Q. Thank you, Doctor. Let me ask you about

1 credit ratings. Do you know whether or not lenders
2 and equity investors use credit ratings as a measure
3 of risk for a utility?

4 A. A credit rating is certainly one factor
5 the investor and lender consider.

6 Q. Okay. You believe DP&L had investment
7 grade credit ratings during 2018 and '19 but do not
8 know if its ratings were at the low end of investment
9 grade, right?

10 A. I believe during that period DP&L's
11 credit rating is investment grade, or was -- was
12 investment grade.

13 Q. But you don't know if its credit ratings
14 were at the low end of investment grade, do you?

15 A. I think depends on what -- what credit
16 rating you are referring to because I already -- you
17 know, because specifically for the -- for the
18 referred to as the credit rating for secured debt
19 like the first mortgage debt, and my -- my
20 understanding is that DP&L has a credit rating of A3,
21 and I think that's above the bottom of investment
22 grade.

23 Q. I'm sorry, Doctor. Did you say DP&L had
24 credit ratings that were at the bottom of the
25 investment grade? I just didn't hear you clearly.

1 A. No. I said DP&L's debt rating for its
2 secured debt is A3 rating by Moody's and that A3
3 rating is higher than the -- than the lowest
4 investment grade rating.

5 Q. Dr. Duann, my question isn't whether it
6 had an investment grade credit rating. My question
7 is comparative to other utilities, and the question
8 is do you know if DP&L had among the lowest of
9 investment grade credit ratings for utilities?

10 A. I cannot answer the question because I
11 have not reviewed the credit ratings of every other
12 utility in the country. However, I do -- I'm
13 familiar with the credit rating of other Ohio
14 electric utilities and I think Dayton's rate is
15 pretty comparable to -- to other Ohio EDUs.

16 Q. Do you know if it's above or below those
17 other Ohio EDUs?

18 A. They are generally in the 10 percent
19 range.

20 Q. Turn, if you would, to your supplemental
21 testimony page 32. You have -- you have a question
22 there that says "Should DP&L be allowed to avoid
23 making SEET refunds to customers because of its
24 future capital investment?" And you answer "No."
25 Then you proceed to give an explanation, correct?

1 A. That's correct.

2 Q. Okay. Now, you do agree with me that the
3 Commission can consider future committed capital
4 investments in deciding whether to require a utility
5 to issue a refund, correct?

6 A. That's correct.

7 Q. Okay. And you do agree with me that if
8 the Commission were to order DP&L to make a
9 \$150 million refund, that would have a negative
10 effect on DP&L's credit ratings?

11 A. It could have an effect on DP&L's credit
12 rating.

13 Q. Okay. Do you know whether DP&L is
14 currently at the ragged edge of investment grade
15 credit ratings?

16 MR. HEALEY: Objection.

17 EXAMINER WILLIAMS: Basis?

18 MR. HEALEY: Vague as to the term "ragged
19 edge."

20 EXAMINER WILLIAMS: Attorney Sharkey, can
21 you rephrase?

22 MR. SHARKEY: I had asked -- your Honor,
23 that's a phrase that comes right out of a Commission
24 decision regarding credit ratings so that's where I
25 pulled the phrase from.

1 EXAMINER WILLIAMS: All right. We will
2 let the question stand.

3 A. Actually I don't quite understand what
4 the regulating of credit rating.

5 Q. You don't understand what it means to be
6 at the ragged edge of investment grade credit
7 ratings?

8 A. No.

9 Q. Do you know if DP&L's issuer of credit
10 ratings for all three major credit rating agencies is
11 investment grade?

12 A. I think the issuer ratings for DP&L right
13 now is -- is still investment grade, and maybe with
14 exception of S&P, and but I'm -- I'm not quite sure,
15 but I am pretty sure Moody's is still rated as
16 investment grade.

17 Q. And do you know if Moody's rates DP&L at
18 the bottom of the investment grade scale?

19 A. I don't know. I know the investment
20 grade.

21 Q. Turn, if you would, to your supplemental
22 testimony page 9.

23 A. Yes.

24 Q. You were discussing a position by Staff
25 in testimony it filed there, correct?

1 A. Are you referring to --

2 Q. I'm sorry, lines 14 to 16.

3 A. -- lines 14 to 16?

4 Q. Correct.

5 A. Yes. In fact, in part of my testimony
6 I'm referring to the testimony of Mr. Buckley filed
7 on January 4, 2021.

8 Q. And you are aware that Mr. Buckley
9 recommended that the Commission conclude that DP&L
10 not have to issue any refunds, correct?

11 A. I understand that's his recommendation,
12 and I do not support that.

13 Q. You don't claim that DP&L's Witnesses
14 Garavaglia and Malinak made any mathematical errors
15 in the calculations that they are supporting,
16 correct?

17 A. I simply did not address that issue, so I
18 am not rejecting their mathematical calculation, but
19 I cannot say I support their mathematical calculation
20 because I think it's simply just -- just not needed
21 for my purpose because all the recommendations that
22 all those adjustments propose I disagree. So since I
23 disagree with their adjustment, I do not see any need
24 to go into the -- to the math on how they calculated
25 that, so I have no opinion one way or the other.

1 Q. Turn, if you would, to your direct
2 testimony, page 7.

3 A. Yes.

4 Q. Page 7, line 12, you state "The Supreme
5 Court of Ohio and the PUCO have repeatedly found a
6 financial stability charge, such as the RSC" and then
7 skip some words there, but "to be not allowed under
8 Ohio law," correct?

9 A. On line 12 to 14, I say "The Supreme
10 Court of Ohio and the PUCO have repeatedly found a
11 financial stability charge, such as the RSC or DP&L's
12 Distribution Modernization Rider ('DMR') to be not
13 allowed under Ohio law." Yes, that's what I say in
14 my direct testimony.

15 Q. Do you know whether the Supreme Court has
16 ever issued decisions regarding the RSC charge by
17 DP&L?

18 A. My recollection is the Supreme Court did
19 not address the appeal regarding the RSC of DP&L
20 because at that time the DP&L has -- has -- the PUCO
21 has approved ESP III so the -- and I believe that the
22 Supreme Court finds the issue to be moot.

23 Q. So you're not aware of any instance in
24 which the Supreme Court in prior cases has held the
25 RSC that was charged by DP&L to be lawful?

1 A. The Supreme Court did find that a similar
2 charge, the SSR of DP&L, to be unlawful.

3 Q. I am not asking about the SSR. I am
4 asking about the RSC.

5 A. I already explained it because the
6 Supreme Court -- because of -- because at the time I
7 think that when it's time for the Supreme Court to
8 decide, the RSC was not in Dayton's tariff, so the
9 Supreme Court did not make a decision of that.

10 Q. Okay. And before that decision that you
11 are talking about, do you know whether the Supreme
12 Court ever decided the RSC was lawful?

13 A. Just the RSC?

14 Q. The RSC.

15 A. Yeah. I already explained it, yeah. You
16 know, I mean, before that I think that the RSC was
17 not before the Supreme Court.

18 MR. SHARKEY: Okay. All right. Thank
19 you, Doctor.

20 Your Honor, I have no further questions
21 at this time.

22 EXAMINER WILLIAMS: Okay. We had
23 potential further cross planned from OMA and the
24 Staff only. So at this time, Mr. Wygonski, are you
25 going to be presenting cross on behalf of OMA?

1 MR. WYGONSKI: Yes, your Honor.

2 EXAMINER WILLIAMS: Are you ready to
3 proceed?

4 MR. WYGONSKI: Thank you.

5 - - -

6 CROSS-EXAMINATION

7 By Mr. Wygonski:

8 Q. All right. Dr. Duann, could we turn --
9 well, first of all, I am going to be referring to
10 your direct testimony throughout my
11 cross-examination. So if I ever just say testimony,
12 that's what I am referring to just so we are on the
13 same page here. Could you turn to page 21 of your
14 direct testimony, please.

15 A. Yes.

16 Q. Thank you. Now, on line 6 and again on
17 line 15, you state that the Settlement would impose
18 at least \$450 million in additional costs for
19 customers, correct?

20 A. Yes.

21 Q. Okay. And these costs are based in part
22 upon the continued RSC payments over the next four
23 years, correct?

24 A. Based in part on that if the -- if the
25 Stipulation is adopted, Dayton will continue to

1 collect the RSC charge for four more years, for
2 approximately four more years, and that would be --
3 result in about 300 to 320 million dollars.

4 Q. Thank you. But you are not stating
5 though that the settlement creates the RSC and causes
6 customers to pay the RSC in the amount of 300 to
7 320 million dollars, correct?

8 A. I would not use the word "create," but I
9 think my view is the settlement will impose that 300
10 and 320 million dollars on customers.

11 Q. Well --

12 A. That settlement will allow -- will
13 guarantee that DP&L can continue to collect that
14 amount during the next four years.

15 Q. Okay. But the RSC does currently exist,
16 right?

17 A. Yes.

18 Q. And customers are already paying the RSC.

19 A. They are paying that right now, yes.

20 Q. And as Jeff asked you earlier, the
21 Supreme Court has not specifically terminated the
22 RSC.

23 A. As I explained earlier, the RSC was --
24 was not specifically decided, but I think it is my
25 expectation that, you know, as the PUCO has decide

1 and the court decide the financial stability charge
2 is unlawful and should not be allowed and RSC charge
3 is a financial stability charge, so I think even the
4 Supreme Court has not directly, you know, decided, as
5 I explained, because that issue was moot, I -- you
6 know, I think -- I think if -- if the RSC was -- you
7 know, I am not an attorney, but my explanation if
8 that RSC was appealed to the Supreme Court, I think
9 it would be found to be unlawful.

10 Q. So I am not asking for the -- any
11 reasoning that -- the legal analysis behind why you
12 think the Supreme Court hasn't ruled that way, but I
13 just want to clarify the Supreme Court has not
14 terminated the RSC.

15 A. As of now.

16 Q. Okay. And -- excuse me. And the
17 Commission has not terminated the RSC either, right?

18 A. Has not, right.

19 Q. But it is your understanding that OCC and
20 others have challenged the legality of the RSC in the
21 past, correct?

22 A. My understanding is this -- this is still
23 case pending right now regarding the -- the
24 continuation of the RSC --

25 Q. Okay.

1 A. -- you know, which has not been resolved.

2 Q. Right. So terminating the RSC would
3 require further litigation to that point, would it
4 not?

5 A. I don't quite understand what you mean by
6 further litigation. I mean, the -- I think the ball
7 is -- is at the court of the PUCO. I think PUCO
8 can -- you know, has the order -- evidence and
9 argument it needs to make a decision.

10 Q. So --

11 A. I don't think there is any need to
12 conduct a hearing or any need to file a brief or. If
13 Commission has all the information they need, they
14 just need to make a decision regarding the RSC.

15 Q. So it is your understanding that the RSC
16 will continue with or without the settlement unless
17 the Commission takes further action to remove it,
18 correct?

19 A. Correct.

20 Q. Okay. All right. Now, let's turn to
21 page 45 of the settlement. Now, isn't it true that
22 Section 20a prohibits the inclusion in DP&L's next
23 ESP application of any nonbypassable charge to
24 customers relating to provider of last resort risks,
25 stability, or financial integrity?

1 A. My reading is the -- is the Stipulation
2 only specifies that DP&L's application should not
3 seek to implement, and I have no way of knowing
4 whether that ESP IV will include those charges or
5 not. I don't know.

6 Q. Okay. That's not what I asked, Doctor.
7 I asked isn't it true that that section prohibits the
8 inclusion in DP&L's next ESP application of any
9 nonbypassable charge?

10 A. Only applied to the application of DP&L.

11 Q. Okay. And that would include the pro --
12 the prohibition of including the RSC in that
13 application, correct?

14 A. Yes. Or -- yes, to the financial
15 integrity charge.

16 Q. Okay.

17 A. But not -- not for the next ESP. That's
18 four years later and that only applies to the
19 application and it -- we don't know whether it will
20 actually happen.

21 Q. Now, when you say four years later,
22 doesn't that provide -- that section also provide
23 that DP&L must file a new ESP case by October 1,
24 2023?

25 A. Right. That's how I calculated the four

1 years is because, you know, suppose you file by
2 the -- by October 1, 2023, then it takes the
3 Commission one year to decide so that's roughly four
4 years.

5 Q. Right. But it's not four years until the
6 application is filed.

7 A. No. It is three years until the
8 application is filed.

9 Q. Okay. And DP&L can't include in its
10 application any other charge that is substantially
11 calculated based on the credit ratings that -- or
12 financial performance of any parent or affiliated
13 company of DP&L, correct?

14 A. They cannot include that in the
15 application.

16 Q. Okay. All right. So let's go back to
17 that 450 million number in purported additional costs
18 that you identify on page 28 and 21 of your direct
19 testimony. That 450 million also assumes that absent
20 this settlement, customers would receive
21 approximately \$150 million in refunds through SEET
22 proceedings for 2018 and 2019, correct?

23 A. Right. That's the -- that's the cost
24 associated with no refund for the 2018 and 2019 SEET
25 case as provided in the Stipulation.

1 Q. Okay. And so you actually performed the
2 SEET calculation to make that determination, correct?

3 A. Yes.

4 Q. And in your calculation of the SEET test
5 and your calculation of the associated refund, you
6 assumed that the Commission would apply a 12 percent
7 ROE threshold; is that correct?

8 A. That's correct.

9 Q. Okay. But you are aware that the
10 Commission has in the past approved thresholds as
11 high as 17 percent, correct?

12 MR. HEALEY: Objection.

13 EXAMINER WILLIAMS: Overruled. He can
14 answer what he is aware of.

15 A. So the question is whether I'm aware if
16 the Commission has -- has approved an ROE threshold
17 as high as 17 percent?

18 Q. Yes.

19 A. Yes, I am aware of that.

20 Q. Okay. And isn't it true that the -- the
21 SEET test was established back in 2008?

22 A. Yes.

23 Q. Okay. And in that time the Commission
24 has only ordered refunds in two SEET proceedings,
25 correct?

1 A. I don't quite understand what you are
2 referring in that period.

3 Q. Since the SEET test was established, up
4 until now the Commission has only found that a
5 utility earned significantly excessive earnings and
6 then ordered a refund twice, correct?

7 A. No, that's not correct.

8 Q. How many times has the Commission ordered
9 refunds?

10 A. Three times.

11 Q. Okay. So let's walk through those. So
12 it's true -- isn't it true that in 2011 a 2009 SEET
13 case resulted in refunds for Columbus Southern Power
14 Company?

15 A. That's my recollection, yes.

16 Q. And in that case the Commission
17 established an ROE threshold of 17.6 percent,
18 correct?

19 A. I don't remember the exact number.

20 Q. Okay. So the -- another SEET refund was
21 a case regarding the 2010 revenues for Columbus
22 Southern Power Company, correct?

23 A. Yes. I think so.

24 Q. Okay. And in that case the Commission
25 established a SEET threshold -- I'm sorry, an ROE

1 threshold of 17.56 percent, correct?

2 A. Once again, I don't remember that exact
3 number.

4 Q. Okay. And the -- one second here. And
5 the third SEET refund that I believe you are
6 referring to is AEP's refund of its 2014 earnings,
7 correct?

8 A. Yes.

9 Q. Are you aware that that case was settled
10 through a Global Stipulation that specifically did
11 not determine that AEP had significantly excessive
12 earnings?

13 MR. HEALEY: Objection.

14 EXAMINER WILLIAMS: He can testify
15 regarding his awareness.

16 A. I'm aware that that's part of a Global --
17 Global Settlement and my recollection is that's a
18 determination of that -- that Ohio Power has
19 significant -- had significant earnings in 2014 and
20 that the provider refund to customers.

21 Q. Right. So it was a Stipulation, part of
22 which was providing a refund, correct?

23 A. Providing a refund based on a finding
24 that it has significant earnings, yes.

25 Q. It was not based on a finding from the

1 Commission that it had -- that AEP had significantly
2 excessive earnings though, was it?

3 A. I don't see the difference. I think
4 that's part of -- part of the settlement, and, you
5 know, my recollection is that settlement says they
6 have significant earnings and agreed to provide a
7 refund to customers.

8 Q. Okay.

9 A. So I don't know. I don't know what you
10 mean by Commission decision. The Commission adopted
11 that Stipulation and that -- that determination is a
12 provision of that Stipulation. That's my
13 understanding.

14 Q. Okay. Dr. Duann, in your calculation,
15 you also assumed that DMR revenues would be included
16 in the SEET calculation, correct?

17 A. Correct.

18 Q. And you included those revenues in your
19 calculation, correct?

20 A. Yeah. I already answered that.

21 Q. Okay. And it's true that no DP&L SEET
22 proceedings have resulted in refunds to customers in
23 the past, correct?

24 A. Correct.

25 Q. Okay. So isn't it true that there is no

1 guarantee these refunds would occur?

2 A. There is no guarantee that the Commission
3 will order a SEET refund one way or the other, yeah.

4 Q. Okay. But you are aware that the
5 settlement contains economic development incentives
6 and grants provided to customers, correct?

7 MR. HEALEY: Objection.

8 A. I'm not familiar with those at all.

9 EXAMINER WILLIAMS: Doctor, hold on for a
10 second.

11 Basis for the objection?

12 MR. HEALEY: Yeah. It's outside the
13 scope of his testimony. His testimony is on the
14 retrospective 2018 and 2019 calculations, not on
15 economic development in the Stipulation, which was
16 more than thoroughly covered by Witness Hill.

17 EXAMINER WILLIAMS: Mr. Wygonski?

18 MR. WYGONSKI: Yes, your Honor. That was
19 really my only question as to that point. I was just
20 trying to make a point that unlike the refunds, the
21 benefits to customers under the settlement are
22 guaranteed.

23 EXAMINER WILLIAMS: To the extent he has
24 an answer, we will let him provide it.

25 A. Well, my answer is I am not familiar with

1 those at all.

2 Q. But in general the benefits to customers
3 under the settlement would be guaranteed --

4 MR. HEALEY: Objection.

5 Q. -- to stop it, correct?

6 MR. HEALEY: Objection.

7 A. No, that's not --

8 EXAMINER WILLIAMS: Hold on. Hold on.
9 There's a protocol we have to follow here so.

10 Basis for the objection?

11 MR. HEALEY: Same basis, outside the
12 scope, but also calls for speculation as to what the
13 legal impact of the Stipulation would be. Use of the
14 word guarantee suggests some kind of legally binding
15 guarantee which would call for Dr. Duann to have to
16 render some kind of opinion on.

17 EXAMINER WILLIAMS: Attorney Wygonski,
18 can you rephrase?

19 Q. (By Mr. Wygonski) Sorry. One second.
20 Dr. Duann, to the extent that the Commission -- you
21 know what? Strike that. I'm struggling to rephrase.
22 I will just move on.

23 The costs of the settlement, Dr. Duann,
24 in general that you identify are based on the
25 hypothetical scenario that the Commission would grant

1 a SEET refund in the entire amount you claim
2 customers are entitled to in the hypothetical
3 scenario that either the Commission or the Supreme
4 Court would terminate the RSC, correct?

5 A. I think -- I think any costs are of
6 benefit analysis regarding something that -- that are
7 going to happen just like the, you know, the SEET
8 refund, this Smart Grid investment where the AES, you
9 know, has to be based on hypothetical.

10 Q. Okay. So you would agree that any
11 cost/benefit analysis should look at the likelihood
12 of either the cost or the benefit occurring, correct?

13 A. I have a little bit of trouble by the --
14 by the word "likelihood." I think as I -- as I
15 say -- as I indicated earlier, that when you are
16 doing a cost/benefit analysis that involves things
17 that are going to happen, then you have to, you know,
18 assess on what -- what do you think should happen and
19 what could happen, yes.

20 Q. So when you -- when you look at a
21 cost/benefit analysis though, you do include
22 probability in your analysis, right?

23 A. Not in my -- well, what -- you are
24 talking about cost/benefit analysis? I'm not doing
25 any cost/benefit analysis. I'm -- I'm -- in my

1 testimony I am pulling out the costs associated with
2 this settlement, and my focus is on the SEET refund
3 as well as the continuation of the RSC. I am not
4 using any probability or any -- or something like
5 that.

6 Q. Okay. So your -- so to go back to that
7 \$450 million cost, you're saying that that cost is
8 based on those SEET refunds not happening and the RSC
9 continuing.

10 A. Right. That's the cost to the customers.

11 Q. Okay.

12 A. If the -- if the proposal -- if the
13 settlement is adopted, yes.

14 Q. Okay. Another line of questioning,
15 Dr. Duann, are you aware of how many parties
16 participated in this proceeding?

17 A. My recollection is I think it's 18
18 parties signed the Stipulation, and I don't know how
19 many parties participated.

20 Q. Okay. Did OCC participate in settlement
21 negotiations?

22 A. Yes.

23 Q. Okay. And OCC represents residential
24 customers, right?

25 A. Yes.

1 MR. WYGONSKI: All right. Thank you,
2 your Honor. I think that's it for me if I could just
3 have a couple minutes to check my notes.

4 EXAMINER WILLIAMS: Yeah. I tell you
5 what, let's take 5, hard 5, and we will reset.

6 Before we do that, who else wants to
7 entertain cross? Staff?

8 I am not seeing anybody else, so we will
9 come back, we'll confirm whether you do or don't have
10 any further questions, and then we will turn to
11 redirect.

12 We are off until 4:23. Thank you.

13 (Recess taken.)

14 EXAMINER WILLIAMS: Attorney Wygonski, we
15 are back on the record. Do you have any further
16 questions?

17 MR. WYGONSKI: Your Honor, I have nothing
18 further for the witness.

19 Dr. Duann, thank you for your time today.

20 THE WITNESS: Thank you.

21 EXAMINER WILLIAMS: Attorney Healey, any
22 redirect?

23 MR. HEALEY: No, no need for any
24 redirect, your Honor. Thank you.

25 EXAMINER WILLIAMS: Dr. Duann, thank you

1 for your testimony. You are excused.

2 THE WITNESS: Thank you.

3 EXAMINER WILLIAMS: Take up the exhibits.

4 MR. HEALEY: Yes, your Honor. OCC moves
5 for the admission of OCC Exhibits 4 and 5.

6 EXAMINER WILLIAMS: Any opposition?

7 Hearing none, both Exhibits 4 and 5 will
8 be admitted into the record.

9 (EXHIBITS ADMITTED INTO EVIDENCE.)

10 EXAMINER WILLIAMS: By my count we are
11 out of witnesses. Let's go off the record.

12 (Discussion off the record.)

13 EXAMINER WILLIAMS: Okay. We are back on
14 the record. It's 4:30 on Friday, January 15. We
15 concluded our presentation of witnesses, discussed a
16 couple matters off the record with briefing
17 schedules, and confirmation of moving forward with
18 closing the case.

19 I understand that at least one party
20 wants to raise a procedural motion.

21 MR. HEALEY: Yes, your Honor. If I may,
22 in one case, Case 20-680, the quadriennial review
23 case, Signatory Parties City of Dayton, IEU, IGS,
24 OEG, OHA, OMAEG, Kroger, and Honda each filed initial
25 comments on July 1, and those same parties plus the

1 University of Dayton filed reply comments on July 16.

2 OCC moves for administrative notice of
3 these comments. The Commission has found in past
4 cases, including Case 16-2422, that it may take
5 administrative notice of facts that are not subject
6 to reasonable dispute which are generally known or
7 capable of accurate verification by a reliable
8 source.

9 This is also consistent with Ohio Rule of
10 Evidence 201(B). The signatory parties' comments
11 satisfy the PUCO standard and the Rule of Evidence
12 because they are publicly available on PUCO dockets
13 which is a reliable source. Upon cross-examination
14 of various OCC witnesses, it has become apparent that
15 one of the signatory parties' theories is that the
16 settlement benefits customers in part because it is
17 more favorable to customers than the applications
18 that DP&L filed.

19 And so administrative notice of these
20 comments is necessary so that OCC can respond to that
21 by pointing out that the settlement is similarly less
22 favorable to customers than all of these signatory
23 parties' litigation positions as stated in these
24 comments.

25 We're not seeking to admit these comments

1 for the truth, just to create a record of what their
2 litigation positions were similar to noting what the
3 company's litigation position is in its application.

4 I would note obviously I believe it was
5 earlier today the Attorney Examiners did take
6 administrative notice of docketed filings in other
7 cases, and they have taken administrative notice of
8 filed comments in past cases including Case 09-756 in
9 which case comments filed by OCC and other parties
10 including the utility were admitted into the
11 evidentiary record.

12 EXAMINER WILLIAMS: Before I get into
13 anyone who has opposition to that, I want to clarify,
14 Case 20-680, you reference back to Case 16-2422?

15 MR. HEALEY: Yes. I was just citing
16 the -- for that case I was just citing in that case
17 the PUCO identified its authority to take
18 administrative notice generally just as precedent.

19 EXAMINER WILLIAMS: Where were the
20 comments filed? Were the comments filed in 20-608?

21 MR. HEALEY: Yes. The initial comments
22 were filed on July 1 ,and reply comments were filed
23 on July 16.

24 EXAMINER WILLIAMS: Okay. Who wants to
25 address whether there's any opposition to the motion?

1 MR. SHARKEY: Your Honor, certainly I
2 would be happy to, but I would like the parties who
3 filed the comments to speak first, if they want to
4 address it, and then I am happy to go last.

5 MS. BOJKO: It doesn't matter the order
6 to me, Mr. Sharkey. I would be happy to go first,
7 although I am not sure Mr. Healey said my client's
8 name, but I thought we filed comments.

9 MR. HEALEY: I mentioned you.

10 MS. BOJKO: Oh, thank you.

11 On behalf of OMAEG, your Honors,
12 administrative notice is not appropriate in this
13 situation because there -- it does explain litigation
14 positions. And where administrative notice would be
15 appropriate would be if a witness was on the stand
16 and Mr. Healey would like to cross-examination --
17 examine that witness about their litigation position
18 versus their settlement position. Then it would have
19 been appropriate in that case.

20 And I believe the cases, of course,
21 without having notice and not having them in front of
22 me, I believe that some of the cases Mr. Healey cites
23 to is that exact situation where there was testimony
24 in prior cases by a witness that was on the stand,
25 and he's either using it for impeachment purposes or

1 he's using it to explain a change in position.

2 That is not the situation here. The
3 parties that filed the comments were not
4 cross-examined on those comments. They were not
5 questioned about their litigation position versus
6 their settlement position. And while Mr. Healey
7 thinks that he might know a direction by questions
8 and cross or positions taken, he is not the counsel
9 for those parties. He does not know what their
10 motive or intent is; and, therefore, he cannot assume
11 positions that will be taken or not taken in briefs.

12 He does have a reply brief opportunity to
13 do that, and he can make arguments in that respect if
14 he would like to then, but if -- if the comments are
15 not being taken for the truth of the matter asserted
16 therein, then they can't be used to state that a
17 party believed a position -- their litigation
18 position was X and now that it's changed.

19 Additionally, I would just add that
20 Mr. Healey cannot disclose confidential settlement
21 discussions, so any assertions that parties may have
22 taken different positions in the settlement
23 themselves would not be permitted and also goes
24 against his position of allowing the administrative
25 notice to be taken of these comments. Thank you.

1 MR. LESSER: Your Honor, if I could add
2 on behalf of the City of Dayton and Honda, I believe
3 that Mr. Healey's stating that he would not be using
4 them for the truth of the matter asserted just --
5 just supports the idea that they should have been
6 used in cross-examination. Mr. Healey chose not to.
7 He did not subpoena any witnesses. He did not
8 attempt to use them. Therefore, it is not
9 appropriate to use them and granting administrative
10 notice for use in this case. The idea of the truth
11 of the matter, once you bring them into the record,
12 that could become meaningless and prejudice the
13 record so we oppose.

14 EXAMINER WILLIAMS: Thank you.

15 Anybody else want to comment?

16 MS. FLEISHER: Your Honor, this is
17 Madeline Fleisher on behalf of the Smart Thermostat
18 Commission. Just to the extent Mr. Healey is relying
19 to the outcome of our prior motion for administrative
20 notice, I would observe that the document that we
21 requested administrative notice of had been reviewed
22 by OCC's witness as he testified on the stand as part
23 of preparing his discovery and so in that case was
24 clearly related. I don't think we have the same
25 situation here.

1 EXAMINER WILLIAMS: Thank you,
2 Ms. Fleisher.

3 MS. WHITFIELD: Your Honor, this is Angie
4 Whitfield for Kroger. I would just echo everybody's
5 comments. And also in looking quickly at the case
6 that Mr. Healey cited, 09-756, that transcript
7 everything was done by agreement. It appears the
8 Stipulation was not contested in that, and so
9 everything was just put into the record in that way,
10 so it's not the same situation as what's before your
11 Honor.

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

14 Anyone else?

15 MR. HEALEY: I would like to respond, if
16 I have an opportunity, when other parties have gone,
17 your Honor.

18 MR. SHARKEY: I would like to respond,
19 your Honor, but I was going to let the parties whose
20 comments were actually at issue go first. It seemed
21 to be appropriate to me.

22 EXAMINER WILLIAMS: I agree, Mr. Sharkey.
23 Anybody else want to comment?

24 The plan will then be to hear from
25 Mr. Sharkey, hear from Mr. Healey, and then we can

1 take a few minutes offline for Judge Schabo and I to
2 discuss the matter and come back with a ruling.

3 All right, Mr. Sharkey.

4 MR. SHARKEY: Yeah, briefly, your Honor.
5 I would second, first of all, the arguments made by
6 other counsel and won't repeat them. I would add
7 that I think it's irrelevant to what parties may have
8 said in comments. It's common practice that people
9 take litigation positions and then take a settlement
10 position. That's just simply irrelevant that that
11 litigation position earlier was different now than
12 their settlement position.

13 I would also note I believe some of the
14 parties that he listed may not be still participating
15 in this proceeding. It's probably, at least in my
16 view, it's unfair to those parties that Mr. Healey
17 didn't provide notice to them that he was going to be
18 providing such a motion and or file the motion in
19 writing. So those are the only initial points I want
20 to make, your Honor.

21 EXAMINER WILLIAMS: Thank you.

22 Attorney Healey, you get the last word.

23 MR. HEALEY: Thank you, your Honor. A
24 couple of things. All the parties identified are
25 signatory parties, so I am not sure what Mr. Sharkey

1 is referring to in terms of not participating. If
2 they are not participating, meaning they are not
3 showing up for this hearing, that's obviously their
4 choice.

5 As to the comments that no one was asked
6 questions about these things on cross, that's the
7 whole point of administrative notice is that you are
8 taking notice of things that can be verified to be
9 accurate without anything further. The court can
10 even do it sua sponte. So the idea that you are to
11 cross-examine someone on a document that is to be
12 administratively noticed negates the very purpose of
13 administrative notice.

14 If I were going to cross-examine, I would
15 introduce it as an exhibit. I want administrative
16 notice simply to be able to say this party said this.
17 There is no dispute that they said it. We are not --
18 and I am not trying to dispute what they said is true
19 or false. I simply want to be able to say this party
20 said X in their comments and that is precisely what
21 administrative notice is designed to facilitate.
22 Thank you.

23 EXAMINER WILLIAMS: I don't think it's
24 going to be very long. It's 4:37. We will come back
25 at 4:40. Thank you.

1 (Recess taken.)

2 EXAMINER WILLIAMS: Karen, can we go back
3 on record, please.

4 The Bench just conferred and has
5 determined to deny the procedural motion at issue.
6 Comments and reply comments filed, we feel, have
7 little or no prejudicial -- or evidentiary value in
8 that obviously the position of parties in a
9 developing case is -- has no necessary bearing on
10 ultimately what comes forward in regard to a
11 potential settlement in that case.

12 Moreover, comments and reply comments
13 filed in the case that precede substantial litigation
14 and negotiations, we feel, could be prejudicial
15 relative to the consideration of the evidence in the
16 case.

17 Finally, we feel that OCC certainly could
18 have brought forward comments and reply comments via
19 witnesses or cross-examination and chose not to do
20 so. We find there is no reason to take judicial
21 notice of the comments at issue in light of those
22 determining factors. So with that the motion is
23 denied.

24 And we will turn to the briefing
25 schedule. We discussed prior to coming back on the

1 record or during an earlier break that briefs in this
2 matter are reasonably expected on February 12, and
3 reply briefs are reasonably expected on March 5.

4 So at this point the Bench will declare
5 those to be the briefing deadlines, and I see no
6 opposition or any further consideration of those
7 dates at issue, so we will proceed with that
8 understanding and expectation.

9 Judge Schabo, you want to close us out?

10 EXAMINER SCHABO: I'm not sure there is
11 much else to be said other than thank you, everyone,
12 for your participation and your patience through this
13 remote hearing.

14 We are adjourned.

15 (Thereupon, at 4:42 p.m., the hearing was
16 adjourned.)

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CERTIFICATE

I do hereby certify that the foregoing is
a true and correct transcript of the proceedings
taken by me in this matter on Friday, January 15,
2021, and carefully compared with my original
stenographic notes.

Karen Sue Gibson, Registered
Merit Reporter.

(KSG-7026)

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Summary: Transcript Dayton Power and Light, Etc.

Volume 5 electronically filed by Mr. Ken Spencer on behalf of Armstrong & Okey, Inc. and Gibson, Karen Sue Mrs.