

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of the :
Application of The Dayton :
Power and Light Company :
for Approval to Defer : Case No. 20-140-EL-AAM
Distribution Decoupling :
Costs. :

- - -

PROCEEDINGS

before Ms. Patricia Schabo and Mr. Michael Williams,
Attorney Examiners, at the Public Utilities
Commission of Ohio, via Webex, called at 10:08 a.m.
on Tuesday, May 4, 2021.

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and

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On behalf of the Ohio Manufacturers'
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8 On behalf of the Staff of the PUCO.

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1 Tuesday Morning Session,
2 May 4, 2021.

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4 EXAMINER WILLIAMS: We're on the record.

5 The Public Utilities Commission of Ohio
6 has assigned for hearing at this time and place Case
7 No. 20-140-EL-AAM in the Matter of the Application of
8 The Dayton Power and Light Company for Approval to
9 Defer Distribution Decoupling Costs.

10 My name is Michael Williams, and with me
11 is Patricia Schabo. We are the Attorney Examiners
12 assigned by the Commission to hear this case. We'll
13 begin today with appearances of counsel. I'll call
14 out party names and ask the counsel to then make
15 their appearances. On behalf of DP&L.

16 MR. SHARKEY: Yes, your Honor. Jeff
17 Sharkey from the Faruki PLL firm on behalf of The
18 Dayton Power and Light Company doing business as AES
19 Ohio.

20 EXAMINER WILLIAMS: Do you want to
21 introduce the rest of your counsel, or do you want
22 them to do it themselves?

23 MR. SHARKEY: I was assuming they would
24 do it themselves, your Honor, but however you prefer.

25 EXAMINER WILLIAMS: That's fine.

1 MR. HOLLON: Christopher Hollon, your
2 Honor, for DP&L on behalf of AES Ohio.

3 EXAMINER WILLIAMS: Thank you.

4 MR. SCHULER: This is, excuse me, Mike
5 Schuler on behalf of Dayton Power and Light doing
6 business as AES Ohio.

7 EXAMINER WILLIAMS: Thank you. On behalf
8 of Staff.

9 MR. EUBANKS: Robert Eubanks, Ohio
10 Attorney General's Office representing Staff, 30 East
11 Broad Street, 26th Floor, Columbus, Ohio 43215.

12 EXAMINER WILLIAMS: On behalf of the
13 Office of the Ohio Consumers' Counsel.

14 MS. WILSON: Ambrosia Wilson, Amy
15 Botschner-O'Brien, and Christopher Healey.

16 EXAMINER WILLIAMS: On behalf of Kroger.

17 MR. WYGONSKI: Your Honor, Jonathan
18 Wygonski with Carpenter Lipps & Leland on behalf of
19 Kroger.

20 EXAMINER WILLIAMS: And on behalf of
21 OMAEG.

22 MS. BOJKO: Thank you, your Honor. On
23 behalf of the Ohio Manufacturers' Association Energy
24 Group, Kimberly W. Bojko, the law firm Carpenter
25 Lipps & Leland, 280 North High Street, Suite 1300,

Columbus, Ohio 43215.

EXAMINER WILLIAMS: Thank you, Ms. Bojko.

That's all I have for the parties.

Transition, as we begin today's hearing, I would like to take a moment to note that due to the COVID-19 emergency that remains in effect, pursuant to Executive Order 2020-01D issued by Governor DeWine in March 2020 and consistent with Amended Substitute House Bill 197 replaced by House Bill 404, this hearing is being held by Webex which enables parties to participate by video conference and for members of the public to access the hearing by telephone or video over the internet.

In light of the virtual nature of today's hearing, I will add some preliminary remarks for the record. First, if counsel or the witnesses experience technical difficulties during the hearing, please immediately contact me and Judge Schabo by phone or by e-mail or contact the event host by calling (614) 466-6843 or by the Webex chat function. Please be aware that the chats are recorded. They are not private, and they are not part of the official record in the case.

For those who may be watching or listening as an attendee, including witnesses who are

1 waiting to testify, while you are observing, your
2 microphone will be muted, and your videos are turned
3 off.

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

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

17 Please be mindful of our court reporter.
18 Please speak clearly, at a reasonable pace, so she
19 can accurately transcribe the record. Please do your
20 best to void speaking over each other by taking
21 corrective steps like intentionally allowing for a
22 pause at the end of questions, generally slowing down
23 in order to allow for connectivity lags and
24 objections.

25 During testimony witnesses should only

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

7 Exhibits ultimately admitted into the
8 record that were not previously docketed should be
9 e-mailed by tomorrow to our court remember at
10 kspencer@, S-P-E-N-C-E-R, @aand, A-A-N-D, .com. I
11 believe from my experience everybody has participated
12 in a hearing of this nature before. And candidly
13 they have gone exceedingly well.

14 So with that I will invite any questions
15 or comments before we begin with the presentation of
16 the case.

17 MR. SHARKEY: Your Honor, you gave a
18 phone number, but I didn't get it all down. Can you
19 give that number again if there is technical issues?

20 EXAMINER WILLIAMS: Sure. Our post is at
21 (614) 466-6843.

22 MS. BOJKO: Your Honor, I don't know if
23 it's just me, but you are very quiet. Is there a way
24 to turn up your mic?

25 EXAMINER WILLIAMS: I appreciate you

1 letting me know that. I know from time to time I've
2 had issues where I revert to a camera microphone as
3 opposed to my headphones so give me one second here.

4 EXAMINER SCHABO: While you play with
5 that, I am just going to clarify the court reporter's
6 e-mail address is aando.com.

7 EXAMINER WILLIAMS: Okay. Does that
8 help, Ms. Bojko?

9 MS. BOJKO: It's a little bit better.
10 Thank you.

11 EXAMINER WILLIAMS: Excellent. You are
12 super loud now for me so. So I will do my best.

13 MS. BOJKO: Sorry. I will turn mine down
14 then.

15 EXAMINER WILLIAMS: I will do my best to
16 articulate, and I will look at it when we are on
17 break and see if there is something else I can do to
18 help that.

19 Okay. Seeing no other preliminary
20 matters, we will then invite Mr. Sharkey to call your
21 first witness.

22 MR. SHARKEY: Actually, your Honor, Mr.
23 Hollon is going to be handling our first witness, so
24 I will leave that to him.

25 EXAMINER WILLIAMS: Mr. Hollon.

1 MR. HOLLON: Thank you, your Honor. AES
2 Ohio calls Karin M. Nyhuis.

3 MR. SCHMIDT: Ms. Nyhuis, you've been
4 promoted to the role of panelist. If you can enable
5 your audio and video.

6 MS. NYHUIS: Can you hear me?

7 EXAMINER WILLIAMS: Yes, we can. I am
8 going to swear you in as we begin. Would you raise
9 your right hand, please.

10 (Witness sworn.)

11 EXAMINER WILLIAMS: Thank you.

12 Mr. Hollon.

13 MR. HOLLON: Thank you, your Honor.

14 - - -

15 KARIN M. NYHUIS

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

18 DIRECT EXAMINATION

19 By Mr. Hollon:

20 Q. Ms. Nyhuis, do you have a copy of your
21 written direct testimony filed in this proceeding on
22 March 5, 2021?

23 A. I do have a copy.

24 MR. HOLLON: Your Honors, we would like
25 to designate Ms. Nyhuis's direct testimony as AES

1 Ohio Exhibit 1.

2 EXAMINER WILLIAMS: So noted.

3 (EXHIBIT MARKED FOR IDENTIFICATION.)

4 Q. (By Mr. Hollon) Ms. Nyhuis, do you have
5 any corrections to your direct testimony today?

6 A. I do.

7 Q. And what are they?

8 A. There's two corrections. One being on
9 page 1 of my testimony. With my current employment
10 my position has changed since this was filed, so my
11 current role is Director of Financial Planning and
12 Analysis. And then on the -- further down on that
13 page, line 16, I served as controller from March 2018
14 through March 2021.

15 Q. Thank you. Is that all of the
16 corrections to your testimony?

17 A. Yes.

18 Q. And if I were to ask you the questions in
19 your direct testimony today, would your answers be
20 the same, subject to those corrections?

21 A. Yes.

22 MR. HOLLON: Your Honor, I have no
23 further questions, and I tender Ms. Nyhuis for
24 cross-examination.

25 EXAMINER WILLIAMS: Thank you,

1 Mr. Hollon.

2 MS. BOJKO: Your Honor, I am having the
3 same difficulty with Ms. Nyhuis. Is it Nyhuis?

4 THE WITNESS: Nyhuis, that's correct.

5 MS. BOJKO: Thank you. It's difficult to
6 hear you, Ms. Nyhuis. Can you speak up or get closer
7 to the mic?

8 THE WITNESS: I can try and bring this.
9 Is that better?

10 MS. BOJKO: Yes. Thank you.

11 EXAMINER WILLIAMS: It is.

12 THE WITNESS: Okay.

13 EXAMINER SCHABO: And before I interrupt
14 somebody, could you just repeat what your current
15 position is now? Director of Financial what?

16 THE WITNESS: Financial Planning and
17 Analysis.

18 EXAMINER SCHABO: Okay. Thank you.

19 EXAMINER WILLIAMS: Okay. We'll
20 entertain cross, and we didn't redirect how that was
21 going to go. Who is going to cross first?

22 MS. BOJKO: Your Honor, would this be a
23 good time to entertain a motion to strike before
24 cross begins?

25 EXAMINER WILLIAMS: It would.

1 MS. BOJKO: Your Honor, at this time
2 OMAEG moves to strike testimony on page 3, lines 13
3 to 18.

4 EXAMINER WILLIAMS: Basis?

5 MS. BOJKO: Yes, thank you, your Honor.
6 The witness is not a lawyer, and her testimony lays
7 no foundation that would otherwise qualify her as an
8 expert by her education, knowledge, training,
9 experience, or skill to offer a legal opinion. This
10 testimony on page 3, lines 13 to 18, is clearly a
11 legal opinion. She has no -- she is not qualified to
12 give this legal opinion as to scope of the
13 Commission's authority and the interpretation of
14 statutes and the Ohio Administrative Code and what
15 that actually means for the scope of the Commission.

16 As such, the legal conclusion in her
17 testimony is improper, it's prejudicial, and it
18 should be stricken.

19 EXAMINER WILLIAMS: Mr. Hollon.

20 MR. HOLLON: Your Honor, Ms. Nyhuis was
21 the controller of The Dayton Power and Light Company
22 from March 2018 until just a few weeks ago. And in
23 that role she needs to have, you know, an
24 understanding, even if it's just a high level
25 understanding, of how some of the -- how some

1 statutes and regulations implicating the Company's
2 accounting operate, and this testimony provides the
3 necessary context for the rest of her direct
4 testimony. And if Ms. Bojko wants to argue points of
5 the law, obviously that can be done on briefing. And
6 so -- as DP&L will also be doing. And so I think the
7 testimony should remain in the record.

8 MS. BOJKO: Your Honor, may I respond?
9 And I have one modification to my motion to strike,
10 I'm sorry. You would have to strike the question as
11 well. So it would really be page 3, lines 11 to 18.
12 But I agree with Mr. Hollon, if she was talking about
13 how the Code affected her accounting and the
14 Company's accounting. I think she does that in the
15 prior question and also in the subsequent questions.

16 She talks about how the Company applies
17 GAAP. But in the question that starts on page 3,
18 line 11, she's talking about the latitude provided in
19 the law and what the Commission is bound by with
20 regard to General Accepted Accounting Principles.
21 She's not talking about how the Company applied the
22 law to their accounting. She's talking about the
23 scope of the jurisdiction of the Commission and what
24 they can review and not review and be bound by or not
25 bound by. That is completely different. And it is

1 in her testimony, and because she is not a lawyer,
2 it's an improper legal opinion.

3 EXAMINER WILLIAMS: I agree, Ms. Bojko.
4 We will strike from lines 11 through 18. That is a
5 legal response to a question of legal authority.
6 We'll allow her to clarify on redirect, if necessary
7 or appropriate. But we have stricken from lines 11
8 through 18 on page 3 of her testimony.

9 MS. BOJKO: Thank you, your Honor.

10 EXAMINER WILLIAMS: Ms. Bojko, anything
11 further?

12 MS. BOJKO: I have no further motions to
13 strike.

14 EXAMINER WILLIAMS: Any other motions to
15 strike from any other parties?

16 Okay. It matters not to the Bench who
17 leads cross. Ms. Wilson or Ms. Bojko, I assumed one
18 of you two would.

19 MS. BOJKO: I can if you would like, your
20 Honor.

21 EXAMINER WILLIAMS: Please proceed.

22 MS. BOJKO: Thank you.

23 - - -

24

25

CROSS-EXAMINATION

By Ms. Bojko:

Q. Good morning, Ms. Nyhuis.

A. Good morning.

Q. Nyhuis. Nyhuis.

A. Nyhuis.

Q. Huis. Huis, my apologies.

A. That's all right.

Q. You stated that you are now the Director of Financial Planning and Analysis; is that correct?

A. That's correct.

Q. And just to clarify for the record, you're not an attorney, correct?

A. I am not an attorney, no.

Q. I am going to turn to page 2 of your testimony. Do you have your testimony in front of you?

A. I do, electronic copy here.

Q. Okay. And that testimony for the record was marked as AES Ohio Exhibit 1?

A. I believe so. I don't have all the exhibits in order. It's an exhibit.

Q. Okay. And for housekeeping I'm with Mr. Sharkey. I've been calling DP&L DP&L for 23 years. If I say DP&L, do you understand that I mean

1 AES Ohio?

2 A. Yes.

3 Q. Thank you. And just to be clear, your
4 testimony refers to it as DP&L, so the dba came after
5 you filed your testimony, correct?

6 A. That's correct.

7 Q. As you note on page 2, lines 14 through
8 16, the Company no longer has a decoupling rider
9 approved by the Commission, correct?

10 A. That's correct. There's no longer a
11 decoupling rider, that's correct.

12 Q. So DP&L -- or AES Ohio is requesting
13 deferral authority in this case; is that correct?

14 A. Yes. AES Ohio is requesting deferral
15 authority under -- as it relates to the amounts
16 agreed to in the distribution rate case Stipulation.

17 Q. And when you say "amounts agreed to," you
18 are not referencing a specific amount that was
19 actually agreed to be collected in the prior rate
20 case, are you?

21 A. No. I'm referring to a decoupling
22 mechanism and calculation a rate per customer charge
23 that was agreed to in the Stipulation.

24 Q. If the deferral authority is granted,
25 then DP&L, or AES Ohio, will carry the deferral on

1 its books as a regulatory asset, correct?

2 A. That's correct.

3 Q. And it's in D -- AES Ohio's application,
4 AES Ohio describes the deferral it is requesting as
5 decoupling costs, correct?

6 A. I'm not recalling the specific wording,
7 but I believe that's correct.

8 MS. BOJKO: I'm sorry, Mr. Hollon. Did
9 you mark the application at the beginning of her
10 testimony?

11 MR. HOLLON: I did not.

12 MS. BOJKO: Okay.

13 Q. (By Ms. Bojko) On page 2 of your
14 testimony, line 11, you recognize that the decoupling
15 amounts are revenues, not costs, correct?

16 MR. HOLLON: Objection, mischaracterizes.

17 EXAMINER WILLIAMS: Sorry, Mr. Hollon.
18 You object on characterization?

19 MR. HOLLON: Yes.

20 EXAMINER WILLIAMS: Ms. Bojko, do you
21 have a response?

22 MS. BOJKO: Your Honor, if she disagrees
23 with my characterization, she can correct me in her
24 response.

25 EXAMINER WILLIAMS: Overrule the

1 objection. Ms. Nyhuis, you can respond and explain.

2 THE WITNESS: Can you repeat the
3 question?

4 MS. BOJKO: Karen, could you please
5 reread it.

6 (Record read.)

7 A. I would -- I guess no because I would say
8 that the revenue per customer methodology is -- is
9 being referenced as the calculation for the
10 decoupling amounts, not necessarily that they would
11 be characterized as revenue on a financial statement.

12 Q. So your contention here today is that
13 you're requesting to defer costs, not revenue?

14 A. Yes. But I would say the distinction
15 between revenues and costs is not significant. The
16 amount is going to be the same whether it's presented
17 as revenue or whether it's presented as costs. It
18 goes back to the -- the Stipulation and Settlement
19 Agreement that was agreed to in the distribution rate
20 case so that a -- so that AES Ohio would be able to
21 achieve its authorized revenue requirement which is
22 really recovery of costs of service including costs
23 of capital. So the distinction between revenue and
24 costs is in my mind not significant.

25 Q. So as a controller of the company, could

1 you define what revenue that the Company receives is?

2 A. Well, we have many different kinds of
3 revenue. And sometimes the characterization -- I
4 guess I would ask if you are referring to on -- for
5 our GAAP books or regulatory books but there are
6 distinctions between like -- we have revenue that
7 generally is recorded as revenue when it's collected
8 through rates. But there are -- sorry. I'm
9 struggling to define a limitation because it's broad,
10 and it would depend on the facts and circumstances of
11 what -- what is being collected on how it's recorded.
12 So there are times -- you know, revenue is a broad
13 term I guess I would say.

14 Q. Money collected from customers is called
15 revenue and is deemed -- is deemed revenue and
16 recorded as revenue on the books, correct?

17 A. I would say there are -- there are times
18 that revenue when it's collected is -- generally when
19 revenue is collected, it's recorded as revenue.
20 There are some times that it is recorded -- recorded
21 as an offset of another asset and not recorded as
22 revenue at that point in time but generally, yes.

23 Q. And when a -- when the Company incurs a
24 cost to provide service, that's recorded as a cost on
25 the customer's -- or the Company's books, correct, or

1 an expense?

2 A. I'm sorry. I think I missed part of your
3 question.

4 Q. When the Company incurs a cost or
5 expense, you record it as a cost or an expense on the
6 Company's books, correct?

7 A. Yes, unless the Company was authorized to
8 defer that cost or expense, at which point in time it
9 would not -- it would not be recorded on the books.

10 Q. It would be recorded on the books, just
11 as a reg asset, right?

12 A. It would -- correct. It would not be
13 recorded on the books as a cost or expense.

14 Q. You state that DP -- I am just going to
15 try to call it the Company. You state the Company
16 is -- is requesting a deferral -- sorry. Strike
17 that.

18 You state that DP&L, or the Company, is
19 requesting deferral authorization to defer amounts
20 calculated based on revenue; is that correct?

21 A. Based on a revenue per customer
22 methodology, yes. Not -- I'll just stop.

23 EXAMINER WILLIAMS: I'm sorry. You
24 trailed off, Ms. Nyhuis.

25 THE WITNESS: Sorry. I said based on a

1 revenue per customer methodology, and then I said
2 I'll just stop. Sorry.

3 Q. (By Ms. Bojko) You would agree with me
4 that in the two -- you are familiar with the 2015
5 rate case that you cite to in your testimony I think
6 the first time would be on page 2?

7 A. I am familiar with that rate case.

8 Q. You would agree with me that in the 2015
9 rate case that -- that you state on page 2 that the
10 Commission authorized the Company to recover lost
11 revenue, not defer, correct?

12 A. I don't have the specific -- I don't have
13 that rate order in front of me, but my recollection
14 is that the -- the order was authorizing collection
15 of a revenue per customer charge and included several
16 different components of lost revenue of which I
17 believe was one of them.

18 Q. Okay. But the Commission order was
19 authorizing you to recover the lost revenue, not
20 defer the lost revenue, correct?

21 A. Yes, but there was -- there was a
22 recovery mechanism in place at the time and the
23 deferral -- so the deferral is distinct from I
24 believe the recovery. It was -- it -- so inherent in
25 that was a deferral and recovery.

1 Q. And you're saying just through the
2 reconciliation mechanism; is that what you are
3 referring to?

4 A. Yes, that there -- that there was an
5 approved, excuse me, recovery mechanism in place
6 through the -- at that point in time. But that's
7 different than the deferral, I guess.

8 Q. Well, isn't it true that the Commission
9 has characterized the decoupling amounts in terms of
10 revenues?

11 A. Yes, I believe the Commission has. And
12 again, I would say the characterization of revenue or
13 costs does not change the calculation of the amounts
14 and the -- the recovery of amounts and revenue
15 requirement from the distribution -- calculated from
16 the distribution rate case Stipulation.

17 MS. BOJKO: Your Honor, I move to strike
18 everything after "again." She answered my question
19 and then continued to elaborate nonresponsively to my
20 question.

21 EXAMINER WILLIAMS: Mr. Hollon.

22 MR. HOLLON: Your Honor, I just think she
23 is providing necessary context for her answer, and it
24 was directly related to the question that Ms. Bojko
25 asked.

1 EXAMINER WILLIAMS: I agree. I think she
2 stayed on topic. We will let her explain her answer.

3 Ms. Bojko, you can proceed.

4 MS. BOJKO: Okay.

5 Q. (By Ms. Bojko) I was actually asking you
6 what the Commission characterized the decoupling
7 revenue amounts as. Did they characterize it as lost
8 revenue?

9 A. Yes. Well, I don't have everything in
10 front of me, but yes, I believe that's -- was their
11 characterization as revenue.

12 Q. Okay. You cite on page 2 again, you cite
13 to the 2008 ESP; is that correct?

14 A. Sorry. Can you point me where you are
15 referring to? I am not recalling 2008 ESP.

16 Q. Line 17. It was styled 08-1094-EL-SSO.
17 Page 2, lines 17.

18 A. Yes, that's correct.

19 Q. And you're familiar with that order?

20 A. I am generally familiar with the order.

21 Q. Do you have in front of you -- maybe we
22 should have done this at the beginning of your cross.
23 I apologize. Do you have in front of you the OMAEG
24 exhibit list?

25 A. I can get it. I don't have it in front

1 of me pulled up or anything, but I can get that.

2 MS. BOJKO: Your Honor, it might be good
3 if we could have her pull that up at this time.

4 EXAMINER WILLIAMS: Please do.

5 A. And I have got to access my e-mail, if
6 that's okay.

7 EXAMINER SCHABO: Ms. Bojko.

8 MS. BOJKO: Yes.

9 EXAMINER SCHABO: For my own information
10 which of the four exhibits?

11 MS. BOJKO: Exhibit 1, 08-1094 case.

12 A. I have that pulled up. Well, I have the
13 list pulled up.

14 MS. BOJKO: Okay. Your Honor, at this
15 time I would like to mark as OMAEG Exhibit 1, a
16 document that was previously marked that and sent
17 around to the parties, the Second Finding and Order
18 of the Commission in Case No. 08-1094-EL-SSO issued
19 December 12, 2019.

20 EXAMINER WILLIAMS: So marked.

21 (EXHIBIT MARKED FOR IDENTIFICATION.)

22 Q. (By Ms. Bojko) Would you click on that
23 link, please.

24 A. The link is not currently working for me.

25 EXAMINER SCHABO: Karen, can we go off

1 the record for a minute.

2 (Discussion off the record.)

3 EXAMINER SCHABO: We can go ahead and go
4 back on the record.

5 EXAMINER WILLIAMS: Okay. We are back on
6 the record. Ms. Nyhuis, I understand you have OMAEG
7 Exhibit 1 opened up on your computer now?

8 THE WITNESS: I do.

9 EXAMINER WILLIAMS: Ms. Bojko.

10 MS. BOJKO: Thank you, your Honor.

11 Q. (By Ms. Bojko) You cite to Case No.
12 08-1094 on page 2 of your testimony and that is the
13 Commission's Second Finding and Order, and I am
14 looking at paragraph 24 of that order. Give you a
15 second to read that.

16 A. Okay.

17 Q. Isn't it true that when the Commission
18 summarized DP&L's position, the Commission stated
19 that DP&L was authorized to collect lost revenue and
20 that the decoupling revenues collected by the
21 decoupling rider are a form of lost revenue?

22 A. Yes, that's -- is here in the order.

23 Q. Do you know what type of amounts were
24 authorized to be collected under the rider in the
25 rate case?

1 A. Yes.

2 MR. HOLLON: Your Honor, I'm going to
3 object here because, you know, the Company has
4 tendered Ms. Nyhuis to discuss accounting rules and
5 regulations regarding the decoupling deferral that's
6 sought in this case. We're separately tendering Mr.
7 Tyler Teuscher to testify as to the regulatory
8 background for this deferral. And to the extent
9 Ms. Bojko is trying to get duplicative testimony, I
10 think the scope of Ms. Nyhuis's testimony should be
11 more focused on the accounting rules so that we're
12 not being duplicative today.

13 EXAMINER WILLIAMS: Ms. Bojko.

14 MS. BOJKO: I don't think that's a
15 recognized objection, your Honor. Ms. Nyhuis cited
16 to the rate case. She cited to the ESP case. She's
17 drawing conclusions about how they book items based
18 on the Commission's order. She pontificates what the
19 GAAP rules allow or don't allow and allow them to
20 book something. And I think it's well within my
21 rights to challenge that testimony and her knowledge
22 of what is actually permitted or not permitted under
23 the rate case and the ESP order that she's relying
24 on.

25 EXAMINER WILLIAMS: I am going to

1 overrule the objection. We will allow Ms. Bojko to
2 proceed with Ms. Nyhuis' knowledge of this background
3 information.

4 MS. BOJKO: I think there was a question
5 pending, your Honor. May I have it reread?

6 EXAMINER WILLIAMS: Please.

7 (Record read.)

8 MS. BOJKO: I guess she did answer it.

9 Q. (By Ms. Bojko) Isn't it true that the
10 Commission stated in that rate case order that the
11 stipulations permit DP&L to implement revenue
12 decoupling through the distribution decoupling rider
13 which will promote energy efficiency efforts, result
14 in elimination of collection of lost revenues, and
15 provide rate stability to both the Company and its
16 customers?

17 A. I don't have it memorized but that -- and
18 I don't have it in front of me, so I don't know that
19 I can say distinctly but that is consistent with my
20 recollection, that it covers several different
21 components.

22 Q. Would you agree with me that the
23 decoupling mechanism is intended to recover the
24 difference between actual revenue received and what
25 the utility was authorized to collect in the rate

1 case?

2 A. Yes. The decoupling mechanism was
3 designed to allow the -- AES Ohio to recover the
4 revenue requirement approved in the rate case, and --
5 and based on the methodology, it could be -- it could
6 be more or less. So the decoupling mechanism could
7 go -- could be a deferral bargaining, or it could be
8 a debit essentially to revenue. It could reduce that
9 based on the calculation, so it could go either way.

10 Q. Fair enough. But the reason why the
11 Company would want a decoupling revenue is to collect
12 the difference between the actual revenue received
13 versus what the utility believed it was authorized to
14 receive under the rate case, correct?

15 A. Yes. Well, this is -- this is covered
16 more, I believe, by Witness Teuscher but my
17 understanding is that it was part of a Settlement
18 Agreement and Stipulation and a bargain, if you say,
19 that the Company agreed to a decoupling mechanism
20 that would give the -- an approved -- or an
21 authorized revenue requirement.

22 And part of that is I believe there was a
23 change in the fixed customer charge as well. So
24 there's -- you know, the reason that the Company -- I
25 don't have the background to all the different

1 reasons that the Company sought that, but it was all
2 part of a Settlement and Stipulation agreement in
3 that case.

4 Q. Well, as one of the controllers in the
5 accounting department at the Company, has the
6 decoupling rider ever become a credit, or is it
7 always a negative to collect the lost revenues, so to
8 speak?

9 A. In certain months it has -- it has gone
10 both ways.

11 Q. How about overall?

12 A. The current position is -- is a revenue
13 deferral -- or an undercollection.

14 Q. A revenue deficiency?

15 A. Deficiency.

16 Q. Is that right?

17 A. Yes.

18 Q. Do you know who Sharon Schroder is?

19 A. I do know who Sharon Schroder is.

20 Q. Who is Sharon Schroder?

21 A. She is the Director of our Regulatory
22 Affairs.

23 Q. Do you know what the position of Sharon
24 Schroder was during the 2015 rate case?

25 A. No, I don't specifically know what her

1 position was or recall what her position was. I may
2 have at the time but.

3 Q. Do you work with Sharon Schroder?

4 A. I do.

5 Q. Do you know whether Sharon Schroder filed
6 testimony in the DP&L rate case in 2015? I'm sorry.

7 A. Yes, I believe she did.

8 Q. Okay. And are you familiar with that
9 testimony?

10 A. At this point in time right now, no.

11 Q. Well, could you click on what's been
12 previously marked as OMAEG Exhibit 4?

13 MS. BOJKO: And while you are doing that,
14 your Honor, at this time I would like to mark for
15 identification purposes as OMAEG Exhibit 4 to keep
16 the prior numbering intact that's on our exhibit
17 list, your Honor, the testimony of Sharon Schroder in
18 support of the Stipulation and Recommendation filed
19 in Case No. 15-1830-EL-AIR that was filed on June 26,
20 2018.

21 EXAMINER WILLIAMS: So marked.

22 (EXHIBIT MARKED FOR IDENTIFICATION.)

23 Q. (By Ms. Bojko) Are you on -- were you
24 successful in your clicking to get to Exhibit 4?

25 A. It actually opened with one click this

1 time, so I don't know what changed, but it worked.

2 Q. Perfect. Is this the testimony that you
3 had been familiar with previously? You said you were
4 familiar with some testimony that she filed at some
5 point.

6 MR. HOLLON: Your Honor, I am going to
7 object. Ms. Bojko is directing Ms. Nyhuis to
8 testimony of, you know, another witness from another
9 proceeding. This is hearsay. Ms. Bojko, if she
10 wanted to ask Ms. Schroder about her testimony in the
11 prior case, she could have called her as a witness,
12 and she did not. And so this line of inquiry is
13 inappropriate.

14 EXAMINER WILLIAMS: Ms. Bojko.

15 MS. BOJKO: Actually, your Honor, I am
16 trying to lay the foundation right now. I haven't
17 asked her any questions about the testimony. I'm
18 asking her whether she's familiar with the testimony,
19 and I have a couple more foundational questions to
20 get us there.

21 EXAMINER WILLIAMS: I'm going to go ahead
22 and allow you to proceed with these questions.

23 Mr. Hollon, if you have continuing
24 objections, please note them and we will go through
25 them as the questions ensue.

1 MR. HOLLON: Thank you, your Honor.

2 Q. (By Ms. Bojko) I think my pending
3 question was is this the testimony that you stated
4 you were familiar with from the 2015 rate case.

5 A. I'm familiar that she filed testimony,
6 yes. I don't believe that I said that I, you know,
7 have in depth familiarity with -- with what was filed
8 back in 2015 as far as like I can't recall anything
9 from it.

10 Q. Okay. Were you involved in the 2015 rate
11 case?

12 A. I was.

13 Q. And did you file testimony in the 2015
14 rate case?

15 A. I did file testimony, accounting
16 testimony.

17 Q. Did you work with or review
18 Ms. Schroder's testimony during the 2015 rate case?

19 A. I actually don't recall, but I don't
20 believe so.

21 Q. Okay. From your involvement in the 2015
22 rate case, are you aware that Company representatives
23 referred to the decoupling amounts, as you defined
24 them, as revenue decoupling?

25 MR. HOLLON: Objection, hearsay.

1 EXAMINER WILLIAMS: I will let her
2 testify as to her awareness.

3 A. My involvement in the 2015 rate case at
4 the time was I was an accounting witness. I wasn't
5 involved in -- in this -- the specifics of it, but
6 again, whether it's referred to as revenue or costs I
7 don't believe is significant.

8 Q. Okay. Let's go back to your testimony on
9 page 2 over to page 3. So I am at the bottom, the
10 last sentence where you state that "The Commission
11 routinely allows utilities to defer amounts on their
12 regulatory books." Do you see that?

13 A. You are on page 3?

14 Q. The sentence starts on page 2 over to
15 page 3.

16 A. Yes.

17 Q. Do you see that?

18 A. Yes.

19 Q. You used the word "amount" in that
20 sentence, correct?

21 A. Yes.

22 Q. Isn't it true that the Commission has not
23 historically allowed a deferral of revenues?

24 A. I am not aware of what the Commission has
25 historically allowed in all circumstances.

1 Q. So when you stated "The Commission --
2 Commission routinely allows utilities to defer
3 amounts," you weren't familiar with what the
4 Commission has or has not allowed in the past?

5 A. I'm familiar with certain things that the
6 Commission has allowed, but I don't know the extent
7 of everything the Commission has allowed.

8 Q. Well, before drafting that sentence did
9 you go review Commission decisions to see what they
10 had allowed?

11 A. The Commission has allowed deferral of
12 regulatory assets. We have deferral of regulatory
13 assets on our books and so there's -- I mean, there
14 is -- that is something that we have received
15 authority for in the past.

16 Q. But sitting here today, you don't know
17 whether the Commission has historically allowed a
18 deferral of revenues.

19 A. I believe there is certain circumstances
20 where it has been allowed in the past, but I do not
21 have them all in front of me or top of mind.

22 Q. Give me one.

23 A. Lost revenues.

24 Q. Do you know a circumstance where the
25 Commission has issued deferral authority -- authority

1 of lost revenues?

2 A. Well, I mean, energy efficiency lost
3 revenues or any -- any -- I guess --

4 MR. HOLLON: Your Honor, can I have the
5 question repeated?

6 MS. BOJKO: Is the witness done with the
7 answer?

8 MR. HOLLON: I don't think she started
9 the answer.

10 MS. BOJKO: I'm sorry. I thought she
11 did.

12 EXAMINER WILLIAMS: It's been maybe 30
13 seconds or so since the question was deposited, so I
14 am going to allow Ms. Gibson to read the question
15 back to Ms. Nyhuis.

16 MS. BOJKO: Thank you, your Honor.

17 (Record read.)

18 A. I guess the example I would point to
19 would be the energy efficiency lost revenue
20 deferrals, but I don't -- you know, I don't know all
21 circumstances.

22 Q. So in the situation you are thinking of,
23 the Commission allowed deferral without a recovery
24 mechanism of energy efficiency lost revenues, or are
25 you speaking of a similar type to what DP&L got in

1 the rate case and ESP case where the Commission
2 approved recovery and the deferral as part of a
3 reconciliation mechanism?

4 A. Again, I -- I don't know that I know in
5 all circumstances which -- which deferrals have been
6 allowed in the past but there -- there would be --
7 would be a deferral when -- you know, when there is a
8 recovery mechanism.

9 Q. Sure. I am asking if you know there has
10 ever been a deferral without a recovery mechanism.
11 So it would be a deferral like what the Company is
12 requesting in this case of revenues without a
13 recovery mechanism, not a reconciliation where you
14 defer until the end of the year, and then you
15 reconcile the amounts. I am talking about straight
16 deferral authority.

17 MR. HOLLON: Objection, compound.

18 EXAMINER WILLIAMS: I think that was --
19 the additional information was clarifying the nature
20 of the question. So, Ms. Nyhuis, if you are able to
21 respond to that question, we'll let you.

22 MS. BOJKO: Thank you, your Honor.

23 A. A deferral of uncollectible costs is
24 another example where you are essentially deferring
25 revenue you were unable to collect, and I believe

1 there are examples of that where it's been permitted
2 to defer without a recovery mechanism.

3 Q. Uncollectible costs?

4 A. Again, uncollectible revenue. You could
5 say it the other way. Again, I say there's
6 distinction -- the distinction between costs and
7 revenue is when you are referring to amounts is more
8 of a presentation or a timing difference.

9 Q. Doesn't the Company have to incur costs
10 before they can collect it from customers and receive
11 the revenue from customers?

12 A. Yes, but costs of service including cost
13 of capital are part of leading up to the revenue
14 requirement.

15 Q. Right. They are costs that the
16 Commission considers when establishing the revenue
17 requirement, correct?

18 A. Correct.

19 Q. Are you familiar with Staff's testimony
20 that was filed in this case, specifically
21 Mr. Lipthratt?

22 A. I'm broadly familiar with it, yes.

23 Q. Isn't it true that Staff said that Staff
24 does not support and the Commission has declined to
25 approve deferrals of revenues in the past?

1 A. Can you point me to the specific place?

2 Q. Sure. And I will break that sentence up.
3 I apologize. Let's start with isn't it true that
4 Staff has said that Staff does not support the
5 deferral of revenues? Do you have Mr. Lipthratt's
6 testimony in front of you?

7 A. I do have it up, yes. I have it open.

8 MS. BOJKO: I apologize. I don't recall
9 if it's been marked previously for identification
10 purposes.

11 EXAMINER WILLIAMS: It has not.

12 Q. (By Ms. Bojko) I am talking about the
13 Staff testimony of David Lipthratt filed on March 19,
14 2021. Is that what you are referring to?

15 MR. HOLLON: Objection.

16 EXAMINER WILLIAMS: Basis?

17 MR. HOLLON: She's asking the witness
18 about another -- another witness's testimony --
19 testimony who hasn't, you know, been on the stand
20 yet.

21 EXAMINER WILLIAMS: Ms. Bojko. Go ahead,
22 Mr. Hollon. I didn't mean to cut you off. Are you
23 still proceeding with your objection, Mr. Hollon?
24 Have you explained your basis?

25 MR. HOLLON: I'm sorry. I think that I

1 kind of glitched there.

2 EXAMINER WILLIAMS: Sure. I started to
3 speak, and I felt like I cut you off. Have you
4 finished the basis for your objection?

5 MR. HOLLON: No. The basis of my
6 objection was that Ms. Bojko is asking the witness
7 about, you know, the testimony of a different witness
8 who has not yet been on the stand yet. And to the
9 extent she is trying to get in Mr. Lipthratt's
10 testimony through Ms. Nyhuis, it would be hearsay.

11 EXAMINER WILLIAMS: Thank you.

12 Ms. Bojko.

13 MS. BOJKO: Your Honor, it doesn't matter
14 whether he has been on the stand or not. In the
15 Commission's historic practice of prefiled testimony
16 is like a direct testimony that is put on a case. If
17 she's familiar with the document, she actually asked
18 me to refer her to the document. I was going to
19 refer her to the document. She asked me to which is
20 why we are here. But if the testimony is filed in
21 the case in opposition of the Company's position and
22 directly opposite to her testimony, I can use it to
23 discredit the witness.

24 EXAMINER WILLIAMS: I am going to allow
25 the testimony in regard to Ms. Nyhuis's understanding

1 of the Commission's approach in regard to the nature
2 of the question, so we will overrule the objection.

3 I will allow you to proceed with the
4 clarifying testimony.

5 MS. BOJKO: Thank you.

6 Q. (By Ms. Bojko) Ms. Nyhuis, I just asked
7 you if the testimony that's dated March 19, 2020,
8 that was filed in this docket 20-140 on behalf of
9 Mr. Lipthratt, whether that's the testimony that you
10 said you were familiar with in this case?

11 A. And I said I was broadly familiar with
12 it.

13 Q. Okay. Then you asked me to point you to
14 a place in the testimony with regard to Staff's
15 position. If you could turn to page 6 of his
16 testimony.

17 A. Sure.

18 Q. Does this refresh your recollection of
19 Staff's position? Isn't it true that Staff said that
20 Staff does not support DP&L's deferral authority
21 request of revenues?

22 A. Yes. That seems to be what Staff
23 testimony here says.

24 Q. And isn't it also true that the
25 Commission has declined to approve deferrals of

1 revenues in the past?

2 A. According to this testimony, it says that
3 Staff generally does not support deferral of
4 revenues.

5 Q. And what about the Commission, isn't it
6 true that the Commission does not generally grant
7 deferrals of revenues?

8 A. I am basing my opinion -- not my opinion.
9 I am basing based on this testimony. Again, I don't
10 have exhaustive knowledge of what the Staff does and
11 does not approve.

12 Q. And you don't have exhaustive knowledge
13 of what the Commission has or hasn't approved with
14 regard to deferrals, correct?

15 A. For all deferrals, no, I do not have
16 exhaustive knowledge.

17 Q. Isn't it true that in DP&L -- the
18 Company's filing, application, the Company did not
19 identify any specific costs associated with its
20 current requests for decoupling approval?

21 THE WITNESS: Sorry. Can I have the
22 question read back?

23 EXAMINER WILLIAMS: Please.

24 (Record read.)

25 A. I don't recall the specific wording but

1 in that -- sitting here right now, but I don't think
2 any -- I don't have -- I don't recall the specific
3 wording sitting here right now.

4 Q. Well, I am not asking about specific
5 wording. I am asking -- okay. Let's just use you.
6 You did not put in your testimony -- you didn't
7 identify any specific costs associated with your
8 current deferral request, correct?

9 A. I did -- I did not list any out in my
10 testimony.

11 Q. And sitting here today, you can't recall
12 whether the Company did or did not list out any
13 specific costs in the application.

14 A. I don't -- I don't believe that there
15 were any specific costs listed out.

16 Q. And from your accounting work at the
17 Company, isn't it true that Dayton -- that the
18 Company no longer has any costs associated with
19 energy efficiency programs?

20 A. My understanding is that in 2021,
21 those -- there's not the specific programs in place
22 or -- but I guess so in -- no time period is given.
23 In 2021, I don't believe the specific programs are
24 still in place, it's my understanding, but I would
25 also understand that the decoupling amounts requested

1 are not specific to energy efficiency only.

2 Q. But you admit that they are -- or do you
3 include energy efficiency costs?

4 A. Sorry. I am not understanding the
5 question.

6 Q. You just said they don't only -- well,
7 first of all, let's back up. I thought you told me
8 that Dayton didn't list out specific costs so how do
9 you know what is included or not included in their
10 deferral request?

11 A. The deferral -- the deferral request goes
12 back to the distribution rate case and the
13 stipulation that was in place for that -- and agreed
14 to as part of that distribution rate case. And the
15 methodology for decoupling changed, I believe, in
16 that, and it included a revenue per customer charge
17 which would essentially encompass a number of
18 different things. Energy efficiency would be a
19 component, but I believe it was energy efficiency
20 prior to that distribution rate case, and then that
21 calculation changed during that time frame.

22 Q. I think you answered a question I want to
23 clarify. Did you file testimony in the 2015 rate
24 case, distribute rate case?

25 A. I filed testimony on our accounting

1 records during that rate case, yes.

2 Q. In the 2015 rate case. It would be
3 15-1830?

4 A. In the 2015 distribution rate case, I
5 don't -- I don't remember all -- the exact number,
6 but yes.

7 Q. Okay. And would you have used the same
8 name as your testimony in this case?

9 A. I would have.

10 Q. Let's turn to page 3 of your testimony.
11 On page 3 starting on line 3, here you explain what a
12 regulatory asset is; is that correct?

13 A. Yes.

14 Q. You would agree with me that the
15 Commission has not issued an order authorizing DP&L
16 to recognize these decoupling revenues as a reg
17 asset, correct?

18 A. Yes. At this point in time we do not
19 have an order; that's the request.

20 Q. Okay. And, in fact, the Commission
21 specifically ordered the Company to stop collecting
22 decoupling revenues pursuant to the rate case stip,
23 correct?

24 A. I don't remember the specific wording.
25 My understanding was that the decoupling rider went

1 away with the ESP III.

2 Q. Okay. Went away so the Commission must
3 have ordered DP&L to stop collecting revenues from
4 customers under the rider, correct?

5 A. The rider is no longer in place. The
6 recovery mechanism is no longer in place.

7 Q. Okay. So DP&L is not -- sorry. I didn't
8 mean to talk over.

9 EXAMINER WILLIAMS: Ms. Nyhuis, do you
10 want to continue with your response, or do you want
11 to proceed with the next question?

12 THE WITNESS: I was -- I was just saying
13 the recovery mechanism is not currently in place.

14 EXAMINER WILLIAMS: Thank you,
15 Ms. Nyhuis.

16 Ms. Bojko.

17 MS. BOJKO: Sorry about that, your Honor.

18 Q. (By Ms. Bojko) So that means that the
19 Company is not currently collecting revenue from
20 customers under the rider, correct?

21 A. That's correct.

22 Q. And let's go back to OMA Exhibit 1. Do
23 you still have that document up?

24 A. Yes.

25 Q. Could you turn to page 36 for me. Not

1 page 36, I'm sorry, paragraph 36.

2 A. I didn't see page 36.

3 Q. It's page 14. Here in paragraph 36 the
4 Commission explains that the riders created in the
5 ESP III case should not be continued with the
6 withdrawal of the ESP III case, correct?

7 A. Yes. But my understanding of this
8 request for deferral is a request for deferral, not
9 request for a rider or recovery.

10 Q. Okay. And is it -- do you know whether
11 the Company filed an app. for rehearing on this
12 elimination of the rider order by the Commission?

13 A. I don't have the order of all -- I don't
14 have a good recollection of all the order of
15 everything that took place.

16 Q. Okay.

17 MS. BOJKO: Your Honor, if I could just
18 have 2 minutes, I need to verify one of the
19 statements of the witness.

20 EXAMINER WILLIAMS: Yeah. Go ahead. We
21 will go off the record and stay in our presence then
22 off the record.

23 (Discussion off the record.)

24 MS. BOJKO: Thank you, your Honor. I
25 have no further questions for this witness.

1 EXAMINER WILLIAMS: Thank you, Ms. Bojko.

2 MS. BOJKO: Thank you, Ms. Nyhuis.

3 EXAMINER WILLIAMS: Anybody want to
4 jump --

5 EXAMINER SCHABO: I don't think we ever
6 went back on the record.

7 EXAMINER WILLIAMS: Thank you, Judge
8 Schabo.

9 COURT REPORTER: I did. I did.

10 EXAMINER WILLIAMS: Okay.

11 MS. BOJKO: Thank you, Karen.

12 EXAMINER WILLIAMS: Thank you for that
13 clarification.

14 Anybody want to volunteer to go next on
15 cross or I will --

16 MS. BOTSCHNER-O'BRIEN: I can go. This
17 is Amy Botschner-O'Brien.

18 EXAMINER WILLIAMS: Thank you,
19 Ms. Botschner-O'Brien. Please proceed.

20 - - -

21 CROSS-EXAMINATION

22 By Ms. Botschner-O'Brien:

23 Q. Okay. Good morning, Ms. Nyhuis.

24 A. Good morning.

25 Q. When your counsel was introducing your

1 testimony, he asked you if your testimony was
2 accurate as of the day it was filed. Do you recall
3 him asking you that? Are there any portions of your
4 testimony that are no longer accurate? Let me say it
5 that way.

6 A. The ones that we corrected.

7 Q. Okay. Other than the ones we corrected.
8 And you're testimony -- testifying as an expert
9 witness today, correct?

10 A. Yes.

11 Q. And what -- what specifically do you
12 consider yourself -- to be your -- your area of
13 expertise?

14 A. I would say my accounting experience, my
15 accounting background as well as working with
16 regulated utilities, and it would be accounting
17 competence.

18 Q. Are you an economist?

19 A. No, I am not an economist.

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

22 A. I am not an attorney.

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

25 A. No.

1 Q. Okay. And turning to your testimony,
2 March 5 testimony, which was identified as AES Ohio
3 Exhibit 1, can you please turn to page 2. Okay. Is
4 it your testimony -- I am looking at lines -- at this
5 point lines 9 through 17. Is it your testimony that
6 DP&L requested PUCO authority to defer decoupling
7 amounts beginning December 19, 2019, calculated on a
8 revenue per customer methodology?

9 A. Yes, as discussed in the testimony with
10 Witness Teuscher.

11 Q. And is it also your testimony that the
12 PUCO authorized DP&L -- I am going to say the
13 Company, PUCO authorized the Company to recover these
14 decoupling amounts plus carrying costs in you've
15 identified Case 15-1830-EL-AIR which you referred to
16 as the 2015 rate case, right?

17 A. Yes.

18 Q. You note that the Company no longer has a
19 rider mechanism to recover such amounts following the
20 Commission's approval of DP&L's reversion to its
21 first Electric Security Plan, correct?

22 A. Correct.

23 Q. Do you agree that DP&L withdrew its third
24 ESP in November of 2019 and that was approved by the
25 PUCO on -- in December of 2019?

1 A. Yes.

2 MS. BOTSCHNER-O'BRIEN: Your Honor, I
3 would like to mark for the record OCC Exhibit 9 which
4 is The Dayton Power and Light Company's notice of
5 withdrawal of its application in Case No.
6 16-395-EL-SSO pursuant to RC 4928.143(C) (2) (a).

7 EXAMINER WILLIAMS: So marked.

8 (EXHIBIT MARKED FOR IDENTIFICATION.)

9 MS. BOTSCHNER-O'BRIEN: Thank you. And I
10 would also like to mark for the record OCC Exhibit 8
11 which is the PUCO's finding and order entered on
12 December 18, 2019.

13 EXAMINER WILLIAMS: That's in case 16-395
14 as well?

15 MS. BOTSCHNER-O'BRIEN: Correct.

16 EXAMINER WILLIAMS: So marked.

17 (EXHIBIT MARKED FOR IDENTIFICATION.)

18 Q. (By Ms. Botschner-O'Brien) Okay. So just
19 backing up, I think you already agreed to this,
20 Ms. Nyhuis, but just the introduction of the
21 exhibits, I might not have caught this, you agreed
22 that DP&L, or the Company rather, withdrew its third
23 ESP in November 2019 and then that was approved by
24 the PUCO in December of 2019 which is what these
25 exhibits actually sort of show.

1 A. Yes.

2 Q. Okay. Thank you. And is it your
3 testimony that as a result of this withdrawal from
4 ESP III, DP&L no longer has the authority to nor a
5 mechanism to recover these decoupling amounts
6 following the PUCO's approval of DP&L's reversion to
7 its first ESP case?

8 MR. HOLLON: Objection, compound.

9 MS. BOTSCHNER-O'BRIEN: Well, I'm just --
10 your Honor, I am actually reading from her testimony
11 to be perfectly honest. This is just from her
12 testimony, but I'll break it up.

13 EXAMINER WILLIAMS: Please do.

14 MS. BOTSCHNER-O'BRIEN: Okay. Certainly.

15 Q. (By Ms. Botschner-O'Brien) It's your
16 testimony that as a result of its withdrawal from ESP
17 III, DP&L no longer has authority to nor a mechanism
18 to recover these -- these decoupling amounts?

19 MR. HOLLON: Objection, compound.

20 MS. BOTSCHNER-O'BRIEN: All right. I am
21 not sure what part is compound.

22 MR. HOLLON: There is an nor in -- there
23 is an or/nor in there.

24 MS. BOTSCHNER-O'BRIEN: Okay. Let's
25 rephrase that question.

1 Q. (By Ms. Botschner-O'Brien) DP&L no longer
2 has authority to recover these decoupling amounts as
3 a result of that withdrawal.

4 A. Yes. It is my testimony that DP&L no
5 longer has the recovery mechanism to -- and to
6 recover these through a decoupling rider. That's
7 different than the authority. I think that would be
8 from the -- is not tied to the recovery mechanism,
9 tied to the -- you know, going back to what was in
10 the distribution rate case and that stipulation, so
11 I'm -- I'm confused by the question and the wording
12 in the question.

13 Q. Okay. They no longer have the mechanism
14 to recover these decoupling amounts, correct?

15 A. Correct. There is no longer a mechanism
16 to recover currently through rates.

17 Q. Okay. And -- and that is because ESP --
18 ESP I did not include riders such as the decoupling
19 rider, correct? That would be the reason.

20 A. The decoupling rider was not included in
21 ESP I, correct.

22 Q. Okay. And I believe you testified under
23 Ms. Bojko's cross-examination that the decoupling
24 rider went away as of ESP III, correct?

25 A. Correct.

1 Q. All right. Can we turn to what was
2 marked as OMAEG Exhibit 1 by Ms. Bojko which is the
3 Second Finding and Order entered on December 18,
4 2019.

5 A. Okay.

6 MS. BOTSCHNER-O'BRIEN: OCC also has that
7 on our exhibit list as OCC Exhibit 1, so I don't
8 know, your Honor, if that becomes a joint exhibit, or
9 I am not sure how that is, but we'll just go --

10 EXAMINER WILLIAMS: I think we are just
11 using the identification for ease of reference, so
12 you can go ahead and reference it as the OMAEG
13 Exhibit 1 for our purposes.

14 MS. BOTSCHNER-O'BRIEN: All right.

15 Q. (By Ms. Botschner-O'Brien) Can we go
16 back -- can we turn to paragraph 36 on page 14 that I
17 believe you were chatting with Ms. Bojko about
18 earlier.

19 A. Okay.

20 Q. Okay. This is the bottom of the page.
21 Do you see that? So we are at the bottom of the
22 page, and you testified moments ago that as a result
23 of this withdrawal from ESP III, DP&L no longer has
24 the mechanism to recover these decoupling amounts,
25 correct?

1 A. Correct, the recovery mechanism.

2 Q. The recovery mech -- yes, the recovery
3 mechanism. And then I asked you if DP&L no longer
4 has the authority to recover these decoupling
5 amounts. Can you read the last sentence, the bottom
6 of page 14.

7 A. It says "like" --

8 Q. Yes.

9 A. "Likewise, although DP&L has proposed to
10 continue the decoupling rider and the RCR, these two
11 riders were created in ESP III and should be
12 eliminated."

13 MS. BOTSCHNER-O'BRIEN: All right. I
14 have no further questions for this witness. Thank
15 you.

16 EXAMINER WILLIAMS: Thank you.

17 And then there were two. Mr. Wygonski,
18 do you have cross?

19 MR. WYGONSKI: I have nothing, your
20 Honor. Thank you though.

21 EXAMINER WILLIAMS: Thank you.

22 Mr. Eubanks?

23 MR. EUBANKS: Your Honor, if you would
24 allow me one minute to confer with my client.

25 EXAMINER WILLIAMS: Yeah. Tell you what,

1 it's almost 11:30. Why don't we do this, why don't
2 we take 5, let everybody gather themselves. In fact,
3 let's take 10. We'll come back at 11:40, and we will
4 proceed then with cross and head into redirect.

5 So we are off the record until 11:40.
6 Thank you.

7 (Recess taken.)

8 EXAMINER WILLIAMS: We'll go back on the
9 record. Now, Mr. Eubanks.

10 MR. EUBANKS: Your Honor, we have no
11 questions for the witness.

12 EXAMINER WILLIAMS: Thank you.

13 Mr. Hollon, redirect?

14 MR. HOLLON: Yes, your Honor, briefly.

15 - - -

16 REDIRECT EXAMINATION

17 By Mr. Hollon:

18 Q. Ms. Nyhuis, you testified earlier that
19 you didn't see a distinction or a significant
20 distinction between costs and revenue in this case?

21 A. Yes.

22 Q. Can you explain why -- why you don't see
23 a significant distinction in that regard?

24 A. Yes. Because the deferral amounts,
25 regardless of whether it's classified as a cost or

1 revenue, would be the same and we would have some of
2 the revenue requirement in the distribution rate case
3 stipulation that encompasses the cost of service of
4 AES Ohio, and so the amounts will be the same.

5 Q. Okay. And then you also testified
6 earlier that the Company didn't itemize any costs in
7 the application in this proceeding, correct?

8 A. That's correct.

9 Q. And why would the Company not have
10 itemized costs in the application in this case?

11 A. Because the costs or the -- it's based on
12 the cost of service and to itemize those costs,
13 again, the revenue requirement is based on the cost
14 of service that would require essentially itemizing
15 all the cost of service.

16 MR. HOLLON: Your Honor, I don't have any
17 further questions.

18 EXAMINER WILLIAMS: Thank you.

19 Ms. Bojko, anything on recross?

20 MS. BOJKO: Yes, your Honor. Thank you.

21 - - -

22 RE CROSS-EXAMINATION

23 By Ms. Bojko:

24 Q. Ms. Nyhuis, just so I'm clear, the
25 decoupling mechanism, the decoupling amounts is

1 the -- is a result of taking the actual revenue
2 received by the Company from customers and
3 subtracting the amount that the Company was allowed
4 to recover per its revenue requirement in the 2015
5 base rate case, correct?

6 A. Generally, yes. The rate per customer
7 charge allowed in that rate case compared to the
8 revenue collected under that is -- is part of that
9 calculation for the decoupling amounts.

10 Q. And it's that difference, the lost
11 revenue, that is then deferred -- that you are asking
12 to be deferred, correct?

13 A. It's the difference -- it's the
14 difference as calculated through the decoupling
15 mechanism, yes, subject of the deferral request.

16 Q. Okay. And you just mentioned the 2015
17 rate case. Your testimony in that case had nothing
18 to do with a discussion of the decoupling rider or
19 implementation of the rider, correct?

20 MR. HOLLON: Objection, beyond the scope
21 of redirect.

22 EXAMINER WILLIAMS: I believe that's
23 accurate.

24 MS. BOJKO: Your Honor, she just
25 mentioned the rate case, and she's talking about what

1 was allowed or not allowed cost versus revenue in the
2 rate case. And I just wanted to clarify she didn't
3 testify to that in the rate case.

4 EXAMINER WILLIAMS: That's beyond the
5 scope of what redirect was.

6 MS. BOJKO: I have no further questions
7 then. Thank you, your Honor.

8 EXAMINER WILLIAMS: Thank you.

9 On behalf of OCC, any further recross?

10 MS. BOTSCHNER-O'BRIEN: No, not on the
11 scope of that redirect.

12 EXAMINER WILLIAMS: Thank you.

13 MS. BOTSCHNER-O'BRIEN: None.

14 EXAMINER WILLIAMS: Mr. Wygonski,
15 anything?

16 MR. WYGONSKI: We have nothing further
17 for the witness, your Honor.

18 EXAMINER WILLIAMS: Mr. Eubanks?

19 MR. EUBANKS: Nothing further, your
20 Honor.

21 EXAMINER WILLIAMS: All right.

22 Mr. Hollon, I assume you are satisfied at this
23 juncture?

24 MR. HOLLON: Yes. At this time the
25 Company would move to admit AES Ohio Exhibit 1.

1 EXAMINER WILLIAMS: Any objections from
2 anyone, any of the parties?

3 AES Exhibit 1 is admitted at this time.
4 (EXHIBIT ADMITTED INTO EVIDENCE.)

5 EXAMINER WILLIAMS: Ms. Nyhuis, you are
6 excused. Thank you for your testimony.

7 MS. BOJKO: Your Honor, may I move --
8 shoot.

9 EXAMINER WILLIAMS: Ms. Nyhuis, you are
10 still excused. Thank you.

11 MS. BOJKO: My apologies, your Honor.
12 Oh, I guess at this time I would ask the Bench to
13 take administrative notice of OMAEG Exhibit 1, the
14 finding -- the Commission Finding and Order in
15 18-1094 that was discussed with Ms. Nyhuis.

16 EXAMINER WILLIAMS: The Bench will take
17 administrative notice of that order.

18 MS. BOJKO: Thank you. And, your Honor,
19 I can no longer hear you again.

20 EXAMINER WILLIAMS: Sorry about that.
21 Does it help if I articulate?

22 MS. BOJKO: That's a little better.
23 Thank you.

24 EXAMINER WILLIAMS: All right. I will
25 look into that when we take our lunch break as well.

1 MS. BOTSCHNER-O'BRIEN: And, your Honor,
2 OCC would move to admit or take administrative notice
3 of OCC Exhibit 8 and OCC Exhibit 9 that we marked
4 during cross with Ms. Nyhuis.

5 EXAMINER WILLIAMS: Okay. I don't
6 believe these are admissible as exhibits. We will
7 take administrative notice of those two orders as
8 well.

9 MS. BOTSCHNER-O'BRIEN: Thank you.

10 EXAMINER WILLIAMS: Anything from anybody
11 else?

12 MS. BOJKO: I'm sorry, your Honor. For
13 clarification I thought OCC's Exhibit 9 was a DP&L
14 Notice of Withdrawal, not a Commission Order; is that
15 not correct?

16 MS. BOTSCHNER-O'BRIEN: It is. It is the
17 DP&L's Notice of Withdrawal of its Application.

18 MS. BOJKO: Given that it's not an order,
19 your Honor, I think it needs to be marked as an
20 exhibit so we can reference it in our briefs.

21 EXAMINER WILLIAMS: Point well taken,
22 Ms. Bojko. So that was OCC Exhibit 9?

23 MS. BOTSCHNER-O'BRIEN: Correct.

24 EXAMINER WILLIAMS: And you have a
25 continuing motion to admit that as an exhibit? Any

1 of the parties have any objection to the admission of
2 that exhibit?

3 Okay. We will take judicial notice of
4 OCC 8, administrative notice of that, and we will
5 admit OCC 9.

6 (EXHIBIT ADMITTED INTO EVIDENCE.)

7 EXAMINER WILLIAMS: Thank you, Ms. Bojko.

8 MS. BOJKO: Thank you, your Honor.

9 EXAMINER WILLIAMS: Okay. If there is
10 nothing else from the parties, then I will turn this
11 over to Judge Schabo, and she will initiate the next
12 witness.

13 EXAMINER SCHABO: All right. Good barely
14 still morning, everyone.

15 Mr. Hollon, will you also be presenting
16 Mr. Teuscher?

17 MR. HOLLON: No, your Honor. Mr. Sharkey
18 will.

19 EXAMINER SCHABO: All right.
20 Mr. Sharkey.

21 MR. SHARKEY: Yes, your Honor. AES Ohio
22 would call Mr. Tyler Teuscher to the stand.

23 MR. SCHMIDT: Mr. Teuscher, you've been
24 promoted. If you can enable your audio and video.

25 MR. TEUSCHER: Yes. Can you hear me?

1 EXAMINER SCHABO: Yes, thank you.
2 Mr. Teuscher, if you would raise your right hand for
3 me.

4 (Witness sworn.)

5 EXAMINER SCHABO: All right. Thank you.

6 - - -

7 TYLER A. TEUSCHER
8 being first duly sworn, as prescribed by law, was
9 examined and testified as follows:

10 DIRECT EXAMINATION

11 By Mr. Sharkey:

12 Q. Mr. Teuscher, do you have before you a
13 copy of your direct testimony in this matter?

14 A. I do.

15 EXAMINER SCHABO: I'm going to interrupt
16 real quick. I am getting a pretty wicked echo on
17 everything. I'm not sure if that is from
18 Mr. Teuscher's volume being up or Mr. Sharkey's
19 volume being up. I can't tell who else may be
20 unmuted.

21 MR. SHARKEY: It appears, your Honor,
22 when you're speaking, Mr. Teuscher is lighting, and
23 when I'm speaking, he's lighting up. So maybe we are
24 getting reverberation from him.

25 EXAMINER SCHABO: Karen, we can go off

1 the record. I'm sorry.

2 (Discussion off the record.)

3 EXAMINER SCHABO: Let's go back on the
4 record.

5 Again, thank you for bearing with us on
6 that technical issue. Mr. Sharkey, I give it back to
7 you.

8 MR. SHARKEY: Thank you, your Honor.

9 Q. (By Mr. Sharkey) Mr. Teuscher, do you
10 have in front of you a copy of your direct testimony
11 that was filed in this matter?

12 A. Yes, I do.

13 MR. SHARKEY: Okay. And, your Honor,
14 that has been designated by the Company as AES Ohio
15 Exhibit --

16 EXAMINER WILLIAMS: I am not sure we have
17 sworn the witness yet with all the transition.

18 EXAMINER SCHABO: Yes, I swore him in --

19 EXAMINER WILLIAMS: Okay.

20 EXAMINER SCHABO: -- before the technical
21 issue. Yes.

22 Mr. Teuscher's direct testimony was
23 previously marked and is now marked for the record as
24 AES Ohio Exhibit 2.

25 (EXHIBIT MARKED FOR IDENTIFICATION.)

1 Q. (By Mr. Sharkey) Mr. Teuscher, do you
2 have any updates to your testimony?

3 A. I do. The decoupling amount DP&L would
4 defer as a result of the request in this case as of
5 March 31, 2021 is \$15,929,002. That amount is from
6 December 19, 2019, through March 31, 2021.

7 Q. And do you have any corrections to your
8 testimony, Mr. Teuscher?

9 A. I do have one correction.

10 MS. BOJKO: Your Honor, I am -- may I
11 interrupt for a second? Was he referring to a spot
12 in his testimony where the number has been corrected?

13 EXAMINER SCHABO: I was just about to ask
14 the same. Did you just make a correction to your
15 testimony, Mr. Teuscher? Are you making an addition
16 to your testimony?

17 THE WITNESS: I'm making an update to my
18 testimony.

19 EXAMINER SCHABO: Okay. Is it -- could
20 you -- could you direct us to anywhere in your
21 prefiled testimony where these figures were
22 discussed?

23 THE WITNESS: I don't believe the figure
24 was included in the prefiled testimony.

25 EXAMINER SCHABO: Okay. In which case I

1 am going to ask you to -- to repeat your update
2 fairly slowly so I can get it written down and look
3 at it, please.

4 THE WITNESS: Okay. I -- my update was
5 that the decoupling amount that DP&L would defer as a
6 result of the outcome of this case as of the date
7 March 31, 2021, is \$15,929,002. And the time period
8 for that amount starting at December 19, 2019, to
9 March 31, 2021.

10 MS. BOJKO: Your Honor, I am having a lot
11 of trouble hearing Mr. Teuscher.

12 EXAMINER SCHABO: Mr. Teuscher, if you
13 could -- I don't know if that -- if the microphone
14 you are actually using is on your headset. If you
15 could bend it closer to you.

16 THE WITNESS: Yeah. Is this better?

17 MS. BOJKO: Yes. Thank you.

18 And, your Honor, I'm sorry. Could I have
19 the dates repeated again?

20 EXAMINER SCHABO: I will ask Mr. Teuscher
21 to repeat the dates.

22 THE WITNESS: Yeah. The dates were from
23 December 19, 2019, through March 31 of 2021.

24 MS. BOJKO: And, your Honor, I'm sorry.
25 I thought he also gave a different date before he

1 listed out the number, and it was maybe February 1,
2 or was that the March 1 date?

3 THE WITNESS: I believe I said March 31,
4 2021.

5 MS. BOJKO: Thank you.

6 MR. SHARKEY: Ms. Schabo, may I proceed?

7 EXAMINER SCHABO: Well, let me ask that
8 everybody is content with what we have at this point.
9 Everybody have what they need?

10 Yes. Please proceed.

11 MS. BOJKO: Well, your Honor, I guess I'm
12 going to move to strike or object to additions of the
13 testimony on the stand and anything in addition to
14 prewritten testimony that's not a correction or a
15 clarification. I'm not sure why we are adding to the
16 testimony at this point, and I would move to strike.

17 EXAMINER SCHABO: Mr. Sharkey.

18 MS. WILSON: OCC would join that motion.

19 MR. SHARKEY: Yes, your Honor. The
20 figure obviously wasn't available at the time the
21 testimony was filed. I think it's helpful to the
22 record to know the most recent amount and what that
23 amount was as of March 31, 2021. So I believe it's
24 an appropriate update to -- to his testimony, and it
25 clarifies the record.

1 MS. BOJKO: Your Honor, may I respond?

2 EXAMINER SCHABO: You may.

3 MS. BOJKO: The testimony was filed
4 March 5, 2021, so it is not clear to me that the
5 figure was not available, but even if it was not
6 available, then there should have been a
7 corresponding figure of February 28, 2021, and that
8 then the witness could provide an update to a number
9 that's already in his testimony. But to add dates
10 and amounts to a testimony that were not included in
11 any form or fashion previously is not appropriate.
12 That's why we have prefiled written direct testimony.

13 MS. BOTSCHNER-O'BRIEN: OCC supports
14 Ms. Bojko's motion.

15 MR. WYGONSKI: Kroger supports it as
16 well, your Honors.

17 MR. EUBANKS: Staff supports the motion
18 as well.

19 EXAMINER SCHABO: At this time I'm just
20 not seeing the immediate prejudice. Feel free to
21 renew that objection during -- during questioning,
22 but right now the motion to strike is overruled.

23 MR. SHARKEY: Thank you, your Honor. May
24 I proceed?

25 EXAMINER SCHABO: You may.

1 Q. (By Examiner Schabo) Mr. Teuscher, do you
2 have any corrections to your testimony?

3 A. I do. I have one correction. It's on
4 page 6, line 17, of my testimony. There is I believe
5 it says "DP&L's" with an apostrophe S. There should
6 be no apostrophe S. The word should just say that
7 "DP&L," and the resulting sentence would say "DP&L's
8 2015 rate case application proposed a larger fixed
9 customer charge than DP&L was charging at the time,
10 to allow DP&L to recover more of its fixed costs to
11 provide service despite variations in customer
12 usage."

13 Q. And then, Mr. Teuscher, with that
14 correction and that update, if I asked you the same
15 questions that are included in your testimony, would
16 you give me the same answers?

17 A. Yes.

18 MR. SHARKEY: Okay. Thank you,
19 Mr. Teuscher.

20 Your Honors, I have no further questions
21 at this time; and Mr. Teuscher is available for
22 cross-examination.

23 EXAMINER SCHABO: Thank you, Mr. Sharkey.

24 Ms. Bojko, will you be going first again?

25 MR. WYGONSKI: Your Honor, would now be a

1 good time for motions to strike?

2 EXAMINER SCHABO: Now would be a good
3 time for motions to strike. We will start with you,
4 Mr. Wygonieski.

5 MR. WYGONSKI: Thank you, your Honor. I
6 have a few portions of his testimony that I will be
7 requesting to be stricken. First, your Honor, I
8 would move to strike as irrelevant the portion of the
9 witness's testimony on page 7 from lines 6 to 8. The
10 sentence beginning "As one example." Your Honors,
11 the witness's description of a deferral authorization
12 in a previous case is irrelevant and misleading here.
13 In the 2015 rate case, which the witness refers to,
14 the Commission authorized DP&L to defer actual costs
15 it incurred from vegetation management programs.
16 However, as the Staff noted in this case, DP&L seeks
17 to defer revenues, not costs.

18 DP&L is not demonstrating any actual
19 costs associated with its deferral, and as such, the
20 previous authorization is irrelevant to this case and
21 it's misleading. It confuses the issue between costs
22 and revenues and should be stricken pursuant to Rules
23 402 and 403.

24 EXAMINER SCHABO: Mr. Sharkey.

25 MR. SHARKEY: Yes, your Honor. A couple

1 of points. One is, as Ms. Nyhuis explained, the
2 distinction between revenues and costs here isn't
3 necessarily a meaningful distinction and that's
4 because the decoupling amounts are calculated on a
5 revenue per customer basis but that a revenue per
6 customer basis was designed to exactly recover
7 DP&L's -- AES Ohio's costs including its costs of
8 capital, so authority relating to deferral of costs
9 is equally applicable as to deferral of revenues.

10 And also this is a point that's been
11 addressed here at issue is whether there have been
12 authorized deferrals when there is not a clear
13 recovery mechanism in the future, and this one is
14 addressing that showing that there's been a deferral
15 of vegetation management, so I think the testimony
16 is -- is entirely relevant in this case.

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

19 MR. WYGONSKI: Yes, your Honor. I
20 respectfully disagree with Mr. Sharkey there. I know
21 that Witness Nyhuis did attempt to minimize the
22 distinction between costs or expenses and revenues,
23 but the point remains that Staff's own witness and,
24 you know, this Commission's past precedent has
25 distinguished between cost and expenses versus

1 revenues in the deferral context.

2 EXAMINER SCHABO: Okay. Well, the motion
3 to strike is overruled. We'll let Staff's own
4 witness testify as Staff's own witness will, and
5 we'll let the Commission go ahead and decide what the
6 Commission said in its 2015 rate case.

7 MR. WYGONSKI: Thank you, your Honor.

8 EXAMINER SCHABO: Are there any remaining
9 motions to strike?

10 MR. WYGONSKI: Yes, your Honor.
11 Similarly on the same issues, your Honor, I would
12 move to strike the witness's testimony on page 7 from
13 lines 15 to 20 for the same reasons. Again, these
14 cases are referring to previous authorization of
15 recovery of decoupling revenues and not to deferral
16 of revenues.

17 EXAMINER SCHABO: Mr. Sharkey, I will let
18 you make your record.

19 MR. SHARKEY: Okay, your Honor. I would
20 urge you to overrule that objection for the same
21 reasons that you just overruled Mr. Wygonski's prior
22 objection and as summarized in my argument here, the
23 distinction between costs and revenues here is not --
24 is not a material one as Ms. Nyhuis explained.

25 And this -- the answers here in the

1 discussion, it is discussing the fact that the
 2 deferral here of decoupling amounts is consistent
 3 with the precedence cited by the Commission including
 4 the fact that the Commission has previously
 5 authorized a -- previously stated that the
 6 appropriate time to implement decoupling is during a
 7 rate case, and the Commission has authorized other
 8 utilities to recover decoupling amounts, so I believe
 9 it's entirely consistent, entirely relevant in this
 10 case.

11 MS. BOJKO: Your Honor, may OMAEG be
 12 heard on the matter, please?

13 EXAMINER SCHABO: Yes.

14 MS. BOJKO: The section that I understood
 15 was the motion to strike, which is page 7, lines 15
 16 to 20, doesn't talk at all about expenses versus
 17 revenues as Mr. Sharkey just stated. It actually
 18 talks about other utility companies and there's
 19 only -- and Mr. Sharkey mischaracterized the
 20 testimony by saying it -- that this referred to
 21 Commission orders. That's just not true. There's
 22 one Commission Order with regard to a Duke case and
 23 then there's a Staff Report with regard to AEP Ohio
 24 Power Company, those two utilities. And one
 25 Commission Order and one Staff Report are completely

1 irrelevant to DP&L's request in this case. And as
2 they are irrelevant to DP&L's request in this case,
3 they should be stricken pursuant to Rules 402 and
4 403.

5 MR. SHARKEY: May I respond, your Honor?

6 EXAMINER SCHABO: You may.

7 MR. SHARKEY: You know, initially
8 Mr. Wygonski has articulated the basis for the motion
9 to strike. That portion was the same as the motion
10 to strike above so I believe my comments that it
11 should be rejected for the same reason were
12 responsive to his motion.

13 Regarding the additional arguments
14 advanced by Ms. Bojko, I believe the fact that the
15 Commission has previously -- the Commission has
16 allowed or the Staff has recommended the approval of
17 the recovery of decoupling amounts in proceedings for
18 utilities is directly relevant to whether it's fair
19 and reasonable for the Commission to allow DP&L to
20 defer the decoupling amounts in this case for
21 potential recovery in the future. It's, you know,
22 simply a showing that the pattern or practice of the
23 Commission should be -- if it's followed in other
24 cases should be followed here, so I believe it's
25 directly relevant.

1 EXAMINER SCHABO: Okay. We are going to
2 strike from the word "and" at line 17 through the end
3 of line 20, so the remaining sentence will state
4 "Indeed, the Commission has approved recovery of
5 decoupling amounts for Duke Energy Ohio, Inc." That
6 is Commission precedent as a Finding and Order and is
7 citeable in briefs.

8 I will take a moment just to state fairly
9 sure it will be the Commission's job to determine the
10 significance of the distinction between costs and
11 revenues. But we're also not going to be citing
12 something that Staff has recommended but has not yet
13 been approved by the Commission.

14 So the motion to strike is granted in
15 part and denied in part.

16 MR. WYGONSKI: Thank you, your Honor.

17 MS. BOJKO: Thank you, your Honor.

18 EXAMINER SCHABO: Are there any
19 additional motions to strike?

20 MR. WYGONSKI: Yes, your Honor. One
21 more.

22 EXAMINER SCHABO: Continue.

23 MR. WYGONSKI: Thank you, your Honor.
24 Kroger would respectfully request to strike the
25 portion of the witness's testimony on page 6 from

lines 2 to 4. The sentence beginning "The Commission authorized." Your Honors, this portion of the witness's testimony constitutes an improper legal opinion under Rule 701, 702. The witness is not an attorney. His testimony lays no foundation that would otherwise qualify him as an expert by his education, knowledge, training, or skills to offer a legal opinion.

Despite this the witness asserts without basis what the Commission authorized in that previous order and a legal opinion as to whether that previous authorization controls the outcome of the ultimate issue in this case.

EXAMINER SCHABO: Sorry. Could you repeat the entirety of the lines you are seeking to strike?

MR. WYGONSKI: Yes. Page 6, lines 2 to 4.

EXAMINER SCHABO: 2 to 4.

MR. WYGONSKI: The sentence that begins "The Commission authorized" and ends with "Rate Case Stipulation."

EXAMINER SCHABO: Okay. I'm sorry. So that's one sentence that goes from line 2 to line 3 and there is a second sentence that goes from line 3

1 to 4. What are you moving to strike?

2 MR. WYGONSKI: My mistake, your Honor.

3 Lines 2 to 3.

4 EXAMINER SCHABO: Okay.

5 MR. WYGONSKI: Just that sentence.

6 EXAMINER SCHABO: Mr. Sharkey.

7 MR. SHARKEY: Yes, your Honor, thank you.

8 Your Honor, the sentence at issue, the subject of the
9 motion deals with a regulatory matter that does not
10 constitute a legal opinion. It's his description of
11 his understanding of what the Commission had
12 authorized DP&L to do when it approved the rate case
13 stipulation, and the rate case stipulation identified
14 what it is that DP&L could defer and recover, so he's
15 simply summarizing there what was in the rate case
16 stipulation and later approved by the Commission
17 which is certainly a matter that's within
18 Mr. Teuscher's knowledge, experience, and expertise.

19 EXAMINER SCHABO: Would anybody else like
20 to weigh in on this motion to strike?

21 MS. WILSON: OCC joins the motion to
22 strike as identified by OMAEG.

23 EXAMINER SCHABO: Motion to strike is
24 granted.

25 MR. WYGONSKI: Thank you, your Honor.

1 MS. WILSON: I apologize. I meant
2 Kroger.

3 EXAMINER SCHABO: Oh. Opening the floor
4 to any additional motions to strike on Mr. Teuscher's
5 testimony.

6 Hearing none, who will volunteer to first
7 step up for cross-examination?

8 MR. WYGONSKI: Your Honor, I can lead
9 off.

10 EXAMINER SCHABO: Wonderful. Please
11 proceed, Mr. Wygonski.

12 MR. WYGONSKI: Thank you, your Honor.

13 - - -

14 CROSS-EXAMINATION

15 By Mr. Wygonski:

16 Q. Mr. Teuscher, thank you for being here
17 with us today. Just to start off, if I refer to
18 DP&L, AES Ohio, or the Company, do you understand
19 those also refer to the same entity?

20 A. Yes.

21 Q. Okay. Thank you. And, Mr. Teuscher, do
22 you have the list of Kroger's planned exhibits that
23 was previously provided in front of you?

24 A. I do.

25 Q. And I know some people mentioned having

1 trouble clicking hyperlinks earlier. Have you been
2 able to open those exhibits?

3 A. Yeah. I downloaded them, and I have them
4 in a folder ready to go.

5 Q. All right. Thank you. All right.
6 Mr. Teuscher, if we could please start off by turning
7 to page 4 of your testimony previously marked as AES
8 Ohio Exhibit 2.

9 A. Okay. I'm there.

10 Q. Okay. DP&L previously had a de -- a
11 decoupling rider, correct?

12 A. That is correct.

13 Q. And the agreement to create that
14 distribution decoupling rider was in the ESP III
15 case, Case No. 16-395, correct?

16 A. Yes.

17 Q. And that was established in October 2017?

18 A. Yeah. I believe that was the date of the
19 order.

20 Q. Okay. And that was established as part
21 of a settlement in that case, correct?

22 A. That was -- that is correct. It was part
23 of a stipulation.

24 Q. Okay. And that stipulation resolved a
25 variety of issues, didn't it?

1 A. That's correct.

2 Q. Thank you. And Kroger was a party to
3 that settlement, correct?

4 A. I believe so.

5 Q. So as part of that stipulation, while the
6 parties agreed to implement the distribution
7 decoupling rider to capture those decoupling
8 revenues, they agreed to reset the methodology in the
9 2015 rate case which was Case No. 15-1830, correct?

10 A. That's right. There was a provision of
11 the stipulation that moved all other matters, rate
12 design, decoupling methodology to the rate case.

13 MR. WYGONSKI: Okay. Let's see, your
14 Honor, at this time for identification purposes we
15 would like to mark Mr. Teuscher's supplemental
16 testimony in the 2015 rate case which was previously
17 identified as Kroger Exhibit 2, and we would just
18 like to keep that marked as Kroger Exhibit 2 for
19 consistency sake.

20 EXAMINER SCHABO: So marked.

21 (EXHIBIT MARKED FOR IDENTIFICATION.)

22 Q. (By Mr. Wygonski) Mr. Teuscher, do you
23 have that document pulled up?

24 A. I do.

25 Q. Okay. And are you familiar with that

1 document?

2 A. Yes, I am mostly familiar with it, yep.

3 Q. Okay. And could you identify that just
4 for the record.

5 A. Yeah. I believe this is my supplemental
6 testimony, and I believe it's Case 15-1830, a
7 distribution rate case, where I am proposing the
8 methodology for the distribution decoupling.

9 Q. Okay. Thank you. Mr. Teuscher, could we
10 turn to page 2 of your supplemental testimony?

11 A. I'm there.

12 Q. Looking at the answer that begins on line
13 6. Now, isn't it true that in the ESP III
14 Stipulation, DP&L agreed to implement that decoupling
15 rider to include lost distribution revenues that had
16 previously been recovered through the energy
17 efficiency rider?

18 A. Yes, that is correct. That was part of
19 the Stipulation in Case 16-395.

20 Q. All right. Thank you. Okay. So moving
21 on I believe we mentioned earlier the parties in that
22 stipulation agreed to set the methodology in the 2015
23 rate case, correct?

24 A. I'm sorry. Can you restate the question?

25 Q. In the 2016 ESP III Stipulation, the

1 parties agreed to set the methodology for the
2 distribution decoupling rider in the 2015 rate case,
3 correct?

4 A. Yes. I believe that Stipulation did
5 direct DP&L and the parties to determine what the
6 methodology would be in the '15 cited case.

7 Q. In the 2015 rate case, the parties then
8 subsequently stipulated which included the new
9 methodology, correct?

10 A. Yes, there was a stipulation that agreed
11 to the methodology.

12 Q. Okay. And you were a witness in this
13 case, weren't you?

14 A. Yes.

15 Q. Okay. Thank you. And isn't it true that
16 some of the parties to the ESP III Stipulation were
17 also part of the 2015 rate case Stipulation?

18 A. Yeah. As I understand it, they were,
19 yes.

20 Q. Okay. And that includes Kroger?

21 A. I believe so.

22 Q. And again, this was a settlement that
23 covered multiple issues.

24 A. Yeah. It was a comprehensive settlement
25 that did cover multiple issues.

1 Q. Okay. And specific to the distribution
2 decoupling rider methodology, the parties agreed to
3 set a revenue per customer methodology for that
4 rider; is that correct?

5 A. That is correct. The methodology that
6 was -- it was agreed upon by all parties as a revenue
7 per customer methodology.

8 Q. Okay. And, Mr. Teuscher, the mechanism
9 that DP&L previously used to calculate the DDR
10 included sales -- I'm sorry. Strike that. Let me
11 rephrase.

12 The methodology that the parties
13 stipulated to in that case included decreases in
14 kilowatt-hours sales due to energy efficiency savings
15 resulting from the Company's approved energy
16 efficiency programs; is that correct?

17 A. I'm sorry. When you say "that case," you
18 are referring to the '15 rate case?

19 Q. Yes. Correct.

20 THE WITNESS: Can I get that question
21 read back, please?

22 (Record read.)

23 A. Yes. The decoupling methodology would
24 include decreases in sales due to any energy
25 efficiency, company approved or not, and whether

1 economic conditions and changes in customer behavior.

2 Q. All right. And so the settlement in the
3 2015 rate case was based on the existence of the
4 previous settlement in the ESP III case, correct?

5 A. Yes. It was based on the stipulation and
6 approval of the stipulation in believe it was Case
7 16-395 that directed DP&L to file a new methodology
8 in the rate case.

9 Q. Okay. So the parties who stipulated to
10 the decoupling methodology in the rate case, in the
11 2015 rate case, did so with the understanding that
12 that methodology would apply to the distribution
13 decoupling rider which was established in the ESP III
14 Stipulation, correct?

15 MR. SHARKEY: Object, your Honor,
16 foundation. Mr. Teuscher can't testify to what other
17 parties to the stipulation understood.

18 EXAMINER SCHABO: Mr. Wygonski, can you
19 rephrase your question?

20 MR. WYGONSKI: Yes, your Honor. Can I
21 just have a second to look at that?

22 EXAMINER SCHABO: Yeah.

23 MR. WYGONSKI: Thank you.

24 Q. (By Mr. Wygonski) Mr. Teuscher, at the
25 time that the parties to the 2015 rate case

1 Stipulation agreed to the new decoupling methodology,
2 that new decoupling methodology was to apply to the
3 existing decoupling distribution -- distribution
4 decoupling rider which was established in the ESP III
5 Stipulation, correct?

6 A. The methodology was determined in that
7 rate case Stipulation, and I believe there was also a
8 provision that said the methodology would be
9 recovered through the distribution decoupling rider,
10 but I don't believe that it means it has to be
11 recovered only through that rider.

12 Q. So that agreement in the rate case at
13 least stemmed from the previous agreement in ESP III
14 to establish that methodology, correct?

15 A. Yes. Again, the 16-395 Stipulation, it
16 did direct DP&L to develop a methodology for
17 distribution decoupling in the rate case.

18 Q. Okay. And, Mr. Teuscher, are you -- do
19 you have in front of you the -- I'm sorry.

20 MR. WYGONSKI: Your Honors, at this time
21 for identification purposes we would like to mark the
22 document listed as Kroger Exhibit 3, the Stipulation
23 filed in the June 18 -- June -- filed on June 18,
24 2018, in the 2015 rate case. We would like to just
25 mark that as Kroger Exhibit 3. I don't believe

1 that's already been marked, has it?

2 EXAMINER SCHABO: It has not. So marked.

3 (EXHIBIT MARKED FOR IDENTIFICATION.)

4 Q. (By Mr. Wygonski) Mr. Teuscher, do you
5 have that document in front of you?

6 A. Yes. I just opened it.

7 Q. Okay. And are you familiar with that
8 document?

9 A. Yes, I'm generally familiar with the
10 document.

11 Q. I'm sorry. And could you just describe
12 that document for the record very quickly.

13 A. Yeah. This is the comprehensive
14 settlement, Stipulation and Recommendation, in the
15 rate case, 2015 rate case, filed by DP&L and signed
16 by all parties.

17 Q. Thank you. And could you turn to page
18 10, paragraph 3 of that document.

19 A. Yes, I'm there.

20 Q. Looking at that paragraph, isn't it true
21 that the parties agreed that DP&L shall be permitted
22 to implement revenue decoupling through its existing
23 decoupling rider?

24 A. The words of the Stipulation say that, if
25 I am looking at it correctly here, DP&L shall be

1 permitted to implement revenue decoupling through its
2 existing decoupling rider.

3 Q. Thank you. Now, it's true that DP&L no
4 longer has that decoupling rider, does it?

5 A. That's correct.

6 Q. Because DP&L withdrew ESP III.

7 A. Yes. Due to the Commission's removal of
8 the DMR from the ESP III, the Company had to take a
9 look and evaluate different options -- options that
10 were best for the Company and its customers, and so
11 it did remove the ESP III.

12 Q. But to be -- oh, sorry.

13 A. No, I'm sorry.

14 Q. Are you finished?

15 A. I'm finished.

16 Q. Sorry for interrupting you there. But it
17 was DP&L's ultimate choice to withdraw that ESP III
18 based on their calculations, forecasts.

19 A. It was, yes, based on the analysis for
20 what was best for the company and the customers at
21 the time, yes.

22 Q. So the Commission did not specifically
23 order them to withdraw that ESP III.

24 A. I don't believe that the Commission did,
25 but I can't recall exactly.

1 Q. Okay. So DP&L is no longer adhering to
2 the Stipulation -- is no longer adhering to the
3 Stipulation that it reached with the parties in the
4 ESP III case, correct?

5 A. I don't believe that -- that Stipulation
6 exists today.

7 Q. Okay. And after DP&L withdrew ESP III,
8 didn't DP&L proceed by requesting to reinstate ESP I?

9 A. Yes. I believe so.

10 Q. And isn't it true that DP&L attempted to
11 modify ESP I by seeking to include the distribution
12 decoupling rider in ESP I?

13 A. I don't think I would agree with that. I
14 don't think that DP&L was trying to modify the ESP I.
15 I think that we believe that there was an opportunity
16 to continue the decoupling rider based on other
17 provisions in that case.

18 Q. Okay. But to be clear, the decoupling
19 rider was established in ESP III, correct?

20 A. The decoupling rider was established in
21 that Stipulation, yes.

22 Q. The decoupling rider was not established
23 when DP&L originally applied for ESP I.

24 A. I don't believe that DP&L filed for a
25 distribution decoupling rider or got one approved

1 originally with ESP I.

2 Q. But when DP&L sought to reinstate ESP I,
3 it sought to include the distribution decoupling
4 rider which was originally created in ESP III.

5 A. I believe that's the case.

6 Q. Thank you. But the Commission did not
7 authorize DP&L to collect decoupling revenues when it
8 approved the current version of ESP I, did it?

9 A. I'm sorry. Can you say the question one
10 more time?

11 Q. When the Commission approved DP&L to
12 reinstate ESP I, the Commission did not authorize
13 DP&L to collect -- collect decoupling revenues, did
14 it?

15 A. That's correct.

16 Q. In fact, the Commission eliminated the
17 decoupling rider, didn't it?

18 A. Yeah. I believe the decoupling rider was
19 eliminated with the withdrawal of the ESP III.

20 Q. And DP&L didn't file an application for
21 rehearing on that issue, did it?

22 A. I don't know.

23 Q. Okay. And no other parties filed an
24 application for rehearing on that issue?

25 A. Again, I don't know.

1 Q. Okay. So do you understand the
2 Commission order still stands to that issue, doesn't
3 it?

4 A. The decoupling rider does not exist
5 today?

6 Q. Yes.

7 A. That's correct.

8 Q. Okay. So let's turn to page 6 of your
9 testimony beginning -- your response beginning on
10 line 2.

11 A. I'm sorry. Which testimony? The '15 or
12 this case?

13 Q. I'm sorry, this case, testimony marked as
14 AES Ohio Exhibit 2.

15 A. Page 5?

16 Q. Page 6.

17 A. 6, okay.

18 Q. Line 2.

19 A. Okay.

20 Q. So your response to that question you
21 believe that the Commission gave DP&L approval to --
22 preapproval to defer and recover future decoupling
23 revenues when it approved the rate case Stipulation.

24 THE WITNESS: I'm sorry. Can I have the
25 question reread, please?

1 (Record read.)

2 A. I believe that the Commission approved
3 deferral authority for the revenue for customers'
4 decoupling methodology, but I don't believe that
5 there was preapproval of a recovery. I don't think
6 that's what this case is about. It's the recovery of
7 those costs.

8 Q. Okay. Thank you. If we could please
9 turn back to Kroger Exhibit 3, the Stipulation filed
10 in the 2015 rate case.

11 A. Yes.

12 Q. Now, if we could turn to page 11 and that
13 paragraph 3e there.

14 A. Okay.

15 Q. Isn't it true that the Stipulation in the
16 2015 rate case only speaks to what the deferral
17 balance will include?

18 A. Like -- like I just said, I think that
19 the Commission approved the deferral of the revenue
20 per customer decoupling methodology in the rate case
21 and that includes what will be included in that
22 deferral balance.

23 Q. Does the 2015 rate case Stipulation speak
24 to deferral at some point besides paragraph e right
25 there?

1 A. I'm not quite sure. I haven't read the
2 entire document.

3 Q. Okay. All right. So, Mr. Teuscher, in
4 its application DP&L describes the deferral that it's
5 seeking, the decoupling amounts, as decoupling costs;
6 is that correct?

7 A. The application in this case?

8 Q. Correct.

9 A. Yes.

10 Q. Okay. And turning to page 7 of your
11 testimony filed in this case marked AES Ohio
12 Exhibit 1, isn't it true that you refer to a previous
13 deferral authorization in the 2015 rate case?

14 MR. SHARKEY: I'm sorry, Mr. Wygonieski.
15 I missed the reference you were pointing Mr. Teuscher
16 to. Would you be so kind to repeat that?

17 MR. WYGONSKI: My apologies. Page 7,
18 lines 6 through 8.

19 MR. SHARKEY: Thank you. I apologize for
20 the interruption.

21 A. Yes. I see that.

22 Q. Okay. And did -- the deferral in that
23 case was related to costs associated with vegetation
24 management, correct?

25 A. That's correct.

1 Q. But isn't it true that the decoupling
2 amounts at issue today are better described as
3 revenues than costs?

4 A. I don't disagree with that. I think that
5 they are costs, and they are in this case, '15 case,
6 that you are referencing here parties agreed to a
7 revenue requirement that is a buildup of costs to
8 serve customers. Decoupling recovers the difference
9 between those costs and what was -- what was
10 considered revenues.

11 Q. But the decoupling amounts are based on
12 the difference between the recovered revenues and the
13 authorized revenues, correct?

14 A. I think the difference is between the
15 actual revenues which are buildup of costs incurred
16 by the company to serve its customers and what's
17 called, I believe, the allowed revenue requirement
18 Stipulation.

19 Q. Okay. And, Mr. Teuscher, isn't it true
20 that the DP&L has previously identified these as
21 revenues?

22 A. I'm not aware of where we've identified
23 them as revenues.

24 Q. Mr. Teuscher, do you have a document --
25 it's on our list. It's marked as Kroger Exhibit 1,

1 but I believe it was previously marked as OMAEG
2 Exhibit 1, the Second Finding and Order in Case No.
3 08-1094?

4 A. Yes, I believe I have that up.

5 Q. Okay. Are you familiar with that
6 document?

7 A. I'm generally familiar with it.

8 Q. I'm sorry. Could you repeat that?

9 A. Yeah. I'm generally familiar with it.

10 Q. Okay. Now, isn't it true in that case
11 that DP&L argued that the Stipulation in the 2015
12 rate case authorized DP&L to collect lost revenue and
13 that the decoupling revenues collected by the
14 decoupling rider are a form of lost revenue?

15 A. Could you point me to where that might
16 be, please?

17 Q. Yeah. I'm looking at the top of page 9
18 about midway through paragraph 24.

19 MS. BOJKO: Excuse me, your Honor. Are
20 we on Exhibit Kroger 1? What exhibit are we on?

21 EXAMINER SCHABO: OMAEG 1.

22 MS. BOJKO: Sorry. Thank you, OMAEG
23 Exhibit 1.

24 EXAMINER SCHABO: Which is one and the
25 same as previously marked.

1 MS. BOJKO: Okay. Thank you.

2 EXAMINER SCHABO: You're welcome.

3 THE WITNESS: Your Honor, now that I have
4 read it, may I have the question reread, please?

5 (Record read.)

6 A. Yes. I would say that decoupling the
7 lost revenue is a form of revenue decoupling, and
8 they are both intended to cover costs that the
9 Company is -- have to serve their customers.

10 Q. Okay. So in that case, DP&L did argue
11 that the decoupling amounts were lost revenue.

12 A. Well, I guess the word "lost revenues" is
13 in quotes here, and it has the word "revenue" in it
14 but what it is designed to do is cover costs incurred
15 by the Company to serve its customers.

16 Q. All right. And, Mr. Teuscher, in your
17 testimony you did not identify -- you know what? I
18 am going to actually move to strike that last
19 question I just asked, your Honor, given the
20 modification to the testimony that occurred today.

21 EXAMINER SCHABO: I'm sorry. You're
22 striking the beginning of your new question or?

23 MR. WYGONSKI: Yes, my question I
24 stopped.

25 EXAMINER SCHABO: Okay.

1 MR. WYGONSKI: Sorry. I wrote that
2 before the modification. I need to address that
3 differently.

4 Q. (By Mr. Wygonski) Mr. Teuscher, isn't it
5 true that DP&L had no approved energy efficiency
6 programs for the 2021 revenue year?

7 A. That's correct. The mandated programs
8 ended December 31, 2020.

9 Q. Because of House Bill 6 eliminating those
10 requirements, correct?

11 A. That's correct.

12 Q. Okay. And, Mr. Teuscher, isn't it true
13 that the Commission Staff generally rejects requests
14 to defer revenues?

15 A. I don't know that to be the case.

16 Q. Are you familiar with the testimony of
17 Mr. Lipthrott that was filed in this case?

18 A. I've skimmed it, and I am generally aware
19 of it.

20 Q. Are you aware that he stated that Staff
21 generally rejects requests to defer revenues?

22 A. Yeah. If he did say that in his
23 testimony, that -- I guess that's what he believes
24 but that doesn't mean it happened every single time.

25 Q. All right. And isn't it true that the

1 Commission generally denies these cases?

2 A. Sorry. What cases?

3 Q. Requests to defer revenues.

4 A. Again, I don't know the answer to that.

5 MR. WYGONSKI: Okay. Your Honor, if I
6 could have a couple minutes to check my notes, see if
7 I have anything further.

8 EXAMINER SCHABO: Absolutely, yeah.
9 We'll hang out here, but we will go off the record
10 for a minute.

11 (Discussion off the record.)

12 MR. WYGONSKI: Your Honor, I have nothing
13 further from Kroger. Thank you, Mr. Teuscher.

14 EXAMINER SCHABO: Karen, did you get
15 that?

16 Thank you. Let's go back off the record
17 real quick.

18 (Discussion off the record.)

19 EXAMINER SCHABO: I apologize for
20 interrupting the questioning of the witness. It is
21 12:40, so I think now is a good time to take a break
22 for lunch. We are going to break until 1:30. So if
23 everybody could come back at 1:30 and we'll continue
24 with Mr. Teuscher's examination.

25 We'll see you then. We're off the

1 record.

2 (Thereupon, at 12:41 p.m., a lunch recess
3 was taken.)

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1 Tuesday Afternoon Session,
2 May 4, 2021.

3 - - -

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

6 Ms. Wilson, you may proceed with your
7 cross-examination.

8 MS. WILSON: Thank you.

9 - - -

10 TYLER A. TEUSCHER
11 being previously duly sworn, as prescribed by law,
12 was examined and testified further as follows:

13 CROSS-EXAMINATION

14 By Ms. Wilson:

15 Q. Good afternoon, Mr. Teuscher.

16 A. Good afternoon.

17 Q. As Kroger did, I would also like to
18 clarify if I refer to DP&L, AES, or the Company, do
19 you understand that to mean -- to all mean the same?

20 A. Yes.

21 Q. And when your counsel, when he introduced
22 your testimony earlier -- strike that. You already
23 went through that.

24 Are you testifying as an expert witness
25 today?

1 A. Yes.

2 Q. And what do you consider to be your area
3 of expertise?

4 A. Regulatory matters, specifically in this
5 case the decoupling mechanism.

6 Q. Are you an economist?

7 A. I am not employed as an economist, but I
8 do have a degree in economics.

9 Q. You are not an attorney; is that correct?

10 A. That's correct.

11 Q. And you are not rendering any legal
12 opinions in your testimony today; is that correct?

13 A. I'm not.

14 Q. And do you have a copy or access to your
15 March 2021 testimony which Mr. Sharkey has marked as
16 AES Exhibit 2?

17 A. Yes, I have that.

18 Q. Could you please turn to page 6 of that
19 testimony.

20 A. Okay.

21 Q. And if you could go to lines 4 to 5.

22 A. I'm there.

23 Q. You state "Deferral of the Decoupling
24 Amounts would enable DP&L to retain the benefit of
25 its bargain in settling that proceeding," correct,

1 "that I understand to still be in effect"? Is that
2 an accurate reading of your testimony?

3 A. Yes, that is.

4 Q. And by amounts do you mean revenues?

5 A. I mean the decoupling costs as we've
6 included in our application in this case.

7 Q. And do you remember testifying a little
8 bit earlier with Kroger when you stated that -- I'm
9 sorry. Strike that.

10 When you testified that deferral of the
11 decoupling amounts allowed DP&L to retain the benefit
12 of its bargain -- I'm sorry. Give me a second.

13 Okay. You testified that you understand
14 the settlement to still be in effect on lines 4
15 through 5; is that correct?

16 A. Yes, the settlement in the 2015 rate
17 case.

18 Q. Okay. And do you recall earlier when
19 Kroger was asking you questions, you stated that you
20 don't believe the Stipulation exists today?

21 A. I believe I was speaking about a
22 different case.

23 Q. If you look at lines 6 through 13 in your
24 testimony, you itemized concessions that AES made and
25 alleged benefits in reaching the bargain, the

1 Stipulation that's no longer in effect.

2 A. Lines 6 through 13 you said?

3 Q. Yes.

4 A. Yes.

5 Q. And isn't it true though that when the
6 ESP III was voluntarily withdrawn -- voluntarily
7 withdrawn from AES, that neither the concessions --
8 the concessions no longer exist; is that correct?

9 A. I guess I'm not sure what -- what
10 concessions and which case you are speaking to.

11 Q. Okay. You referred to the settlement,
12 the Stipulation for ESP III that was withdrawn, and
13 you -- you identified several concessions that the
14 Company made in reaching the settlement, and you
15 listed some benefits that would occur to other
16 parties; is that accurate?

17 A. I think that this section of my testimony
18 is speaking about the rate case Stipulation and not
19 the ESP III Stipulation, if that's what you are
20 referring to.

21 Q. Right. But this rate case Stipulation is
22 the basis for AES's contention that they had approval
23 with this settlement; is that correct?

24 A. I believe what DP&L is saying is that
25 the -- the rate case Stipulation provides deferral

1 authority for the decoupling amounts due to the fact
 2 that it was a package of agreed upon benefits, and
 3 DP&L made concessions in that case in order to agree
 4 to a decoupling mechanism so the proposed customer
 5 charge was higher. And then during settlement, the
 6 Company, based on the Staff Report in the
 7 distribution rate case, that they wanted a lower
 8 customer charge, reduced that customer charge, and
 9 then agreed to a decoupling mechanism in order to
 10 recover its revenue requirement.

11 Q. And have any of those concessions and
 12 agreements occurred?

13 A. Yeah. Like I stated in my testimony, I
 14 believe that the rate case Stipulation for the 2015
 15 rate case is still in place and still in effect.

16 Q. But you just stated a few minutes ago
 17 that you don't believe the Stipulation is in effect
 18 or exists?

19 A. I believe that I said that this
 20 Stipulation in Case 16-395, the ESP III, doesn't
 21 exist. I think I agreed that the Stipulation in the
 22 2015 rate case is still in effect and still does
 23 exist.

24 Q. Thank you for clarifying that. Can you
 25 please turn to page 7 of your testimony.

1 A. Sure.

2 Q. And I'm looking at lines 14 to 15.

3 A. Okay.

4 Q. And you state in your testimony the PUCO
5 has held that the appropriate time to implement a
6 decoupling rate design is during an electric utility
7 base rate case; is that correct?

8 A. Yes, that is correct.

9 Q. And is this proceeding a base rate case?

10 A. This specific proceeding is not a base
11 rate case. However, the decoupling mechanism and the
12 rate design for that mechanism was determined in a
13 DP&L rate case and that's what the basis for this
14 case is based on.

15 MS. WILSON: Your Honor, I move to strike
16 everything after, no, this is not a base rate case.

17 EXAMINER SCHABO: Motion to strike
18 denied.

19 MS. WILSON: Thank you.

20 Q. (By Ms. Wilson) Mr. Teuscher, could you
21 please take a look at what has been marked as OCC
22 Exhibit 14.

23 A. OCC Exhibit? I'm sorry, what number?

24 Q. 14, it's your testimony in the rate case.

25 A. The 2020 rate case?

1 Q. Yes, the 20-1651.

2 A. Okay. I have that here.

3 Q. Okay. And I just described it.

4 MS. WILSON: Your Honor, I would like to
5 mark what has previously been identified as OCC
6 Exhibit 14 as OCC Exhibit 14 for identification
7 purposes.

8 EXAMINER SCHABO: So marked.

9 (EXHIBIT MARKED FOR IDENTIFICATION.)

10 Q. (By Ms. Wilson) And, Mr. Teuscher, isn't
11 it true that AES filed for its most recent base case
12 here, 20-1651, after it filed for deferral -- for the
13 deferral -- sorry, after it filed for this deferral
14 authority in this case?

15 A. Yes, yes.

16 Q. So isn't it true that AES could have
17 properly included this request for deferral authority
18 in the most recent base rate case, the 20-1651?

19 A. Well, I think the 2020 rate case was for
20 a future period and the rate case, the 15-1830, is
21 still in place today and those rates are still in
22 place and so this request for deferral authority is
23 for a period that covers that rate case and
24 doesn't -- isn't really related to the 2020 rate
25 case.

1 Q. Right. But the deferral authority ceased
2 when the AES withdrew from the ESP III; isn't that
3 correct?

4 A. I would not agree with that. I think the
5 recovery authority, the authority to recover those
6 costs, ceased with the ESP III withdrawal, but I
7 still believe that the rate case gives us the -- the
8 Company the authority to defer those same costs.

9 Q. But isn't it true -- I'm sorry. Strike
10 that.

11 A little bit ago you confirmed that you
12 agreed PUCO has held that the appropriate time to
13 request deferral authority is in a rate case, a base
14 rate case -- base rate case?

15 A. I think that my testimony in this case
16 states that the Commission set that the time to
17 address decoupling is in a base rate case.

18 Q. But AES did not include this deferral in
19 the most recent 20-1651 rate case; is that correct?

20 A. That is correct. Like I said before, the
21 time period is a different time period, and the
22 deferral application in this case is for a period
23 that covered up until the most recently filed rate
24 case, approval of that case, and currently the rates
25 from the Case 15-1830 are still in place, so I view

1 them as different.

2 Q. Is it your understanding that AES could
3 have included its request for deferral authority in
4 this most recent filed base rate case?

5 A. I think that DP&L could have filed for
6 deferral authority and a recovery mechanism of a new
7 decoupling mechanism in its 2020 rate proceeding for
8 a period that starts with the approval of those
9 rates.

10 MS. WILSON: Your Honor, may I have a few
11 minutes to take a look at notes and see if I am done
12 with my questions?

13 EXAMINER SCHABO: Yes. We will go off
14 the record, but we'll hang out here.

15 (Discussion off the record.)

16 EXAMINER SCHABO: Go back on the record.

17 Ms. Wilson, does that conclude your
18 cross-examination?

19 MS. WILSON: I have a couple more
20 questions.

21 EXAMINER SCHABO: Okay. Proceed.

22 Q. (By Ms. Wilson) Mr. Teuscher, isn't it
23 true that AES filed for its most recent base -- base
24 rate case after it filed this Case 20-140 for
25 deferral authority?

1 A. I'm sorry. I think you cut out maybe
2 just at the beginning. Could you repeat that?

3 Q. I'm sorry. Isn't it true that AES filed
4 for its most recent base rate case, which you've
5 identified as 20-1651, after it filed its application
6 in this case, 20-140, for deferral authority?

7 A. That's correct.

8 Q. So isn't it true that AES could have
9 properly included its request for deferral authority
10 in this most recent base case, 20-1651?

11 A. Yeah. I think I -- I think that I
12 answered this a couple times, but I think they are
13 different time periods. Again, the deferral
14 authority, the deferral that we are requesting in
15 this case, would be from December 19, 2019, through
16 the approval of that rate case, 20-1651. And so any
17 I think filing for deferral authority in the '20 rate
18 case would have been for a new revenue decoupling
19 mechanism that would have started at the approval of
20 that case.

21 Q. Okay. So if it's your contention that it
22 can only be done on a '15 case, only the '15 case has
23 that time frame, isn't it true that DP&L no longer
24 has the ability to do that in the 2015 rate case?

25 A. I believe that the deferral request in

1 this case is pursuant to the '15 rate case and is
2 essentially one and the same.

3 MS. WILSON: At this time OCC will move
4 to admit Exhibit 14.

5 EXAMINER SCHABO: We will address the
6 admission of exhibits at the end of the witness's
7 testimony.

8 MS. WILSON: Okay. Thank you. I have no
9 further questions at this time.

10 EXAMINER SCHABO: Okay. Thank you.

11 Ms. Bojko?

12 MS. BOJKO: Yes, thank you, your Honor.

13 - - -

14 CROSS-EXAMINATION

15 By Ms. Bojko:

16 Q. Good afternoon. Did I hear you state to
17 Ms. Wilson that you believe the 2015 rate case gives
18 authority to continue the deferral?

19 A. Yes. I believe that the deferral
20 authority is -- is in that case.

21 Q. So you believe this application was not
22 even necessary to be filed by Dayton.

23 A. No, I don't think that's true. I believe
24 it was filed out of an abundance of caution, but we
25 believe -- or DP&L believes the authority for

1 deferral was approved in the rate case.

2 Q. So I'm confused. Do you believe you
3 already have Commission authority to defer, or are
4 you seeking Commission authority to defer through
5 this case?

6 A. This case is seeking Commission authority
7 to defer the decoupling costs that were approved as
8 part of the '15 rate case.

9 Q. So without an order in this case, you are
10 not currently deferring, correct?

11 A. We are not currently deferring.

12 Q. And without an order in this case, you
13 don't think you will be able to defer, correct?

14 A. I believe we would need an order in this
15 case in order to defer those costs.

16 Q. Could you turn --

17 A. Those were approved in that case.

18 Q. I apologize. I didn't mean to speak over
19 you.

20 A. That's okay.

21 Q. Could you please turn to page 3 of your
22 testimony.

23 A. I'm sorry, in this case?

24 Q. Yes. Are you there?

25 A. One second. Yes, I'm there.

1 Q. I'm referring to line 10 of your
2 testimony. Here you state that "The approved Rate
3 Case Stipulation recommended that Dayton recover its
4 authorized revenue requirement through base
5 distribution rates and Revenue Decoupling"; is that
6 correct?

7 A. Yes, I see that. That's correct.

8 Q. And then on line 15 you state "DP&L's
9 Revenue Decoupling is calculated by taking the
10 difference, whether positive or negative, between the
11 Allowed Revenue Requirement and actual base
12 distribution revenues for the D17, D18, D19 tariff
13 classes," correct?

14 A. I see that, yes.

15 Q. And then you also -- the deferral request
16 is also to add carrying costs; is that correct?

17 A. Yes. The deferral request is based on
18 the '15 Stipulation that also includes carrying
19 costs.

20 Q. Would you agree that energy efficiency is
21 one of the contributing factors to the decoupling
22 amounts?

23 A. Yes, there is energy efficient --
24 reductions in energy usage due to energy efficiency
25 programs is part of what's included in the decoupling

1 mechanism along with, you know, changes in weather,
2 customer behavior, economic issues.

3 Q. Can you look at page 5 of your testimony,
4 please, line 16. You refer to a date there,
5 "December 19, 2019." Do you see that?

6 A. Yes, I see that.

7 Q. And this date was selected as the
8 beginning period of your deferral request because
9 it's the day after the Commission Order which ordered
10 you, Dayton -- excuse me, the Company to eliminate
11 the decoupling rider, correct?

12 A. Yes.

13 Q. And the end date of the period would be
14 the implementation of new rates from the 2020 base
15 rate case, correct?

16 A. That is correct.

17 Q. Okay. And DP&L is -- sorry. AES is
18 stopping the deferral with the new rate case because
19 the new base rates would reflect the new revenue
20 requirement for the Company for providing
21 distributions -- distribution service during the test
22 year, correct?

23 A. That's correct.

24 Q. And is DP&L proposing to recover the
25 deferral if granted in this case in the base

1 distribution rate case?

2 A. I don't think a decision has been made
3 where DP&L would recover this de -- the deferral in
4 this case. I think there can be probably a couple
5 different ways to do that, but I don't think the
6 decision has been made at this time.

7 Q. So where else would DP&L propose to
8 collect any deferred amounts if not in the rate case?

9 A. I guess I don't know all the possible
10 ways, but I believe that it could be done in a base
11 rate case or perhaps an ESP case.

12 Q. Does Dayton have a current pending ESP
13 case?

14 A. Dayton does not have a current pending
15 ESP case.

16 Q. Excuse me. Sorry. On line 20 of that
17 same paragraph on page 5, you say "This deferral
18 amount is directly related to the amount of base
19 distribution revenue collected." Do you see that?

20 A. Yes.

21 Q. And wouldn't it be true to add plus
22 carrying costs there?

23 A. I don't know if that would be true or
24 not. The carrying costs is just a standard
25 Commission mechanism to -- for the time value of

1 money for the company holding onto over/under charges
2 in a deferral mechanism, so I think the deferral
3 amount and the costs that we're requesting is
4 directly related to the base distribution revenue
5 collected through the rate design reading that
6 Stipulation, but I don't think it would be true to
7 just add the words "and carrying costs."

8 Q. Well, under your proposal the deferred
9 amount includes carrying costs.

10 A. The deferred amount would include
11 carrying costs.

12 Q. Isn't it true the Commission doesn't,
13 it's not standard, they don't always grant carrying
14 costs, correct?

15 A. I would say typically carrying costs are
16 granted but maybe not in all cases.

17 Q. And turn to page 6 of your testimony,
18 please, lines 10 through -- I guess the sentence
19 starts on line 9. You talk about decoupling
20 methodology being a benefit, being a beneficial rate
21 design. Do you see that?

22 A. Yes, I do see that.

23 Q. You would agree with me that it's
24 beneficial to the Company because the Company gets
25 guaran -- it's guaranteed revenue requirement,

1 correct?

2 A. I would not agree with the statement that
3 it's only beneficial to the Company or that it
4 guarantees a revenue requirement. It also benefits
5 customers because it allows DP&L to maintain a
6 reliable level of service for customers, and it gives
7 customers a flat price signal on their rates. And
8 then I think you'd -- the other thing is that -- I'm
9 sorry, lost my train of thought there. I was trying
10 to answer two questions, I think.

11 THE WITNESS: Can I have the question
12 reread, please?

13 MS. BOJKO: Yeah. Well, your Honor,
14 before that question is reread, I am going to move to
15 strike his answer as nonresponsive because he didn't
16 actually answer my question correctly. I did not use
17 the word "only," so I ask that he -- that response be
18 stricken, and then we reread the question and have
19 him answer the question posed.

20 EXAMINER SCHABO: I'm having mute
21 problems. I believe you asked him about his
22 understanding, and he gave you his understanding, so
23 I am going to overrule that motion to strike.

24 Karen, would you reread the question such
25 that he can gather his train of thought.

1 (Record read.)

2 A. So I was going to finish my answer about
3 the guaranteed revenue requirement. The mechanism in
4 the rate case was a revenue per customer mechanism,
5 and it does not allow for a guaranteed revenue
6 requirement. It allows for changes to that revenue
7 requirement. It could be lower or higher based on
8 the number of customers in DP&L's service territory.

9 Q. You would agree with me that the
10 decoupling methodology proposed by the Company is
11 beneficial to the Company, correct?

12 A. I think it depends on your definition of
13 what beneficial -- beneficial, I mean, I guess how?
14 I'm sorry.

15 Q. So you're here today saying you're
16 proposing an application that doesn't benefit the
17 Company?

18 A. No. I believe it does benefit the
19 Company in certain ways, and it benefits customers in
20 certain ways.

21 Q. Let's focus on the benefit to the
22 Company. Without the decoupling mechanism the
23 utility would only collect the actual revenues
24 received, correct?

25 A. Yes.

1 MR. SHARKEY: I am going to object, your
2 Honor, to an incomplete hypothetical. There was a --
3 as Mr. Teuscher has explained in his testimony
4 previously, the original proposal by DP&L was to have
5 a higher customer charge, and part of the bargaining
6 for exchange was to eliminate that higher customer
7 charge. I think it's an incomplete hypothetical
8 without identifying what happened to the customer
9 charge.

10 EXAMINER SCHABO: Your objection is
11 overruled.

12 MS. BOJKO: Your Honor, I move to strike
13 the counsel's testimony. I said nothing about a
14 customer charge. I asked him if the rate methodology
15 was beneficial to Dayton and whether they would only
16 receive the revenue requirement proposed without the
17 mechanism.

18 EXAMINER SCHABO: Counsel's objection is
19 not evidence and there is no reason to strike it.

20 MS. BOJKO: Fair enough. Thank you.

21 EXAMINER SCHABO: If you could refrain
22 from testifying on behalf of your client, I would
23 appreciate that.

24 MR. SHARKEY: I apologize, your Honor.

25 EXAMINER SCHABO: Please proceed,

1 Ms. Bojko.

2 Q. (By Ms. Bojko) If -- if the Company does
3 not receive the decoupling rider, they would receive
4 the actual revenues, not the revenue requirement
5 necessarily, established by the 2015 rate case,
6 correct?

7 A. Yes. If in a vacuum the decoupling rider
8 was -- was not -- the deferral was not approved in
9 this case, then yes.

10 Q. And on that same -- in that same sentence
11 on line 12, you talk about "expenses associated with
12 frequent rate cases." Do you see that?

13 A. I do see that.

14 Q. And you're talking about in this
15 situation a rate case decision in 2018 and not the
16 rate case that was filed in 2020?

17 A. This part of my testimony I don't think
18 is specifically speaking to the rate case filed in
19 2020.

20 Q. So is it fair to assume if you got the
21 rate case order in 2018, that there will likely be
22 approximately three years between Dayton's current
23 rate case and its past rate case?

24 A. There may be. I don't know when that
25 case will be approved.

1 Q. Would you consider three years frequent?

2 A. For rate cases considering that I believe
3 DP&L's last rate case before the '15 case was 25
4 years, I would say so.

5 Q. So with the decoupling mechanism, you
6 received a rate increase in 2018, and you're now
7 going to receive another one in 2021, correct?

8 A. I guess I don't know what the outcome of
9 that case will be but there were several reasons and
10 circumstances that led to the filing of that case and
11 one of those was the removal of the distribution
12 decoupling rider.

13 Q. Oh, you're saying that the utility
14 Dayton -- AES filed the 2020 rate case because they
15 did not have the decoupling mechanism; is that your
16 testimony?

17 A. That is not what I am saying.

18 Q. Can you go down to the bottom of that
19 page, lines 18 to 22. On line 20 you talk about a
20 charge. Do you see that, the customer charge?

21 A. I see that.

22 Q. This is what Mr. Sharkey was referring
23 to, right, the customer charge?

24 A. That's correct.

25 Q. That is different from the decoupling

1 rider, correct?

2 A. Yes. There is a customer -- customer
3 charge, charge to customers, and then there is a
4 decoupling mechanism.

5 Q. Okay. So in this sentence you talk about
6 a concession. Just so the record is clear, you are
7 referring to your opinion -- or you're referring to
8 what DP&L is alleging was a concession, correct?

9 A. Yes. During the -- during the rate case
10 Stipulation, there were some parties that wanted the
11 customer charge reduced. And as a concession to
12 reducing the customer charge, DP&L included reduction
13 to decoupling as part of its mechanism to recover its
14 base -- base rate revenue requirement.

15 Q. I'm still confused. Is the concession
16 you are referring to a DP&L concession?

17 A. Yes. It's a concession -- the proposal
18 in the rate case was to include a higher fixed
19 customer charge.

20 Q. Okay.

21 A. The concession was reducing that customer
22 charge by almost half and then including a decoupling
23 mechanism.

24 Q. And that was DP&L's unilateral decision?

25 A. It was agreed upon as part of a package

1 deal in the 2015 rate case that all parties signed
2 onto.

3 Q. So as part of this package, wouldn't all
4 parties have to agree with your interpretation of
5 what was or wasn't a concession?

6 A. I don't know that any individual party
7 knows all the motivations of any other party, I
8 suppose.

9 Q. Great point. My point exactly. Did you
10 call the other parties to ask them if they believed
11 that allowing DP&L to defer the decoupling amounts
12 was consistent with that bargain struck in the
13 settlement?

14 A. In the 2015 rate case, like I said, DP&L
15 proposed a higher fixed customer charge, and the
16 Staff in its Staff Report suggested that they did not
17 want to entertain fixed variable rate design in this
18 case and that they would prefer lower fixed customer
19 charge, so during settlement, DP&L agreed with Staff
20 and other parties on that and included a revenue for
21 customer decoupling mechanism.

22 Q. I was asking you about your current
23 testimony.

24 MS. BOJKO: But, your Honor, I am going
25 to have to move to strike. I think that's verging on

1 confidential settlement discussions, what was just
2 discussed right there, what Staff -- he can speak to
3 what Dayton may or may not have agreed to, but he
4 can't speak to what Staff did or didn't agree to.

5 EXAMINER SCHABO: Ms. Bojko, you just
6 asked him if he -- if he called all the other parties
7 to see if they agreed.

8 MS. BOJKO: Your Honor, I was referring
9 to his testimony right here and asked -- if you look
10 at page 7, I asked him if he called the parties
11 before writing the statement to say that it was
12 consistent. It was a "yes" or "no" question. It
13 wasn't to go into the 2015 rate case settlement
14 discussions and tell me what Staff was thinking or
15 not thinking when entering into those settlement
16 discussions. I didn't ask anything about the 2015
17 rate case.

18 EXAMINER SCHABO: Karen, would you read
19 back his answer, actually the question and the
20 answer.

21 (Record read.)

22 EXAMINER SCHABO: Motion to strike is
23 overruled. If you would like to reask your question
24 because you didn't like the answer, feel free to do
25 so.

1 MS. BOJKO: Oh, your Honor, I am fine
2 with the answer. I think it's inappropriate to talk
3 about settlement discussion in the other case, and I
4 didn't think it was appropriate to have it in the
5 record of this case. If it's fine, it's fine.

6 Q. (By Ms. Bojko) My question though was
7 referring to look at page 7 of your testimony, sir.
8 Before drafting your testimony and writing this
9 statement, did you call -- it's a "yes" or "no"
10 question. Did you call the other parties to see if
11 they agree with your statement on lines 1 and 2 of
12 page 7?

13 A. I did not call all the parties.

14 Q. And isn't it fair to assume that clearly
15 at least four parties to that past stipulation or
16 parties have agreed not to oppose the stipulation do
17 not agree with your statement on lines 1 and 2?

18 MR. SHARKEY: I am going to object, your
19 Honor. It calls for Mr. Teuscher to speculate as to
20 what the subjective beliefs are. It is true they've
21 opposed DP&L's application. Mr. Teuscher can't
22 testify as to what they think or believe.

23 EXAMINER SCHABO: He can testify as to
24 his understanding. Objection is overruled.

25 THE WITNESS: Can I get the question

1 reread, please?

2 (Record read.)

3 A. I don't know if those parties agree or
4 disagree with that statement.

5 Q. To your knowledge, all four parties that
6 are participating in this hearing today were either
7 signatory parties or agreed not to oppose the 2015
8 rate case; is that correct?

9 A. I believe so.

10 Q. And is it -- it's a true statement that
11 all four parties participating in the hearing today
12 appear to oppose the application, correct, Dayton's
13 current application?

14 A. They appear to oppose the application,
15 but I am not sure about which parts.

16 Q. Well, are you aware of any parts they
17 agree with? Let's start with that.

18 A. Again, I don't know. You know, I don't
19 know -- I don't know.

20 Q. Okay. Let's go to page 8 of your
21 testimony. On page 8 of your testimony, you again
22 talk about the Company seeking deferral of decoupling
23 amounts for a period of December 19, 2019, through
24 the effective date of the new base distribution rate
25 case, correct?

1 A. That's correct.

2 Q. And DP&L is seeking to recover costs
3 during that entire period, is that correct, from --
4 excuse me. I'll rephrase.

5 DP&L is seeking to recover costs
6 beginning December 19, 2019, right?

7 A. We are not seeking to recover costs.
8 We're seeking to defer the costs.

9 Q. Thank you for that correction. My
10 apologies. Let's try that again. So DP&L is seeking
11 to defer the costs beginning December 19, 2019,
12 correct?

13 A. That's correct.

14 Q. Okay. And you're not seeking to stop the
15 collection of the costs on March 31, 2021, correct?

16 A. We are not seeking to stop the deferral
17 of costs on March 31, 2021.

18 Q. Did I say recovery again? I'm sorry if I
19 did. Thank you for clarifying. Okay. So now
20 let's -- let's go to talk for a minute about the
21 additional testimony you provided today. You gave us
22 a cost number from December 19, 2020 -- 2019, to
23 March 31, 2019; is that correct -- or March 31, 2021?

24 A. That's correct.

25 Q. Okay. So that's not the end of your

1 deferral request or that's not the entire period of
2 your deferral request, correct?

3 A. That's correct.

4 Q. Did you provide the \$15 million number
5 that you provided today to any parties in the
6 proceeding prior to your testimony today?

7 A. I don't believe the number from
8 December 19, 2019, through March 31, 2021, was
9 provided before today.

10 Q. Okay. And did you provide that number to
11 Staff?

12 A. Not that I'm aware of.

13 Q. Did you provide workpapers regarding that
14 number to any parties or Staff in the case?

15 A. Not that I'm aware of.

16 Q. And now we are in a unique situation that
17 you don't have the testimony handed to you at the
18 live hearing, but did you attach or do you plan to
19 attach a workpaper or spreadsheet to your testimony
20 today?

21 A. I don't think so.

22 Q. Do you have a workpaper or spreadsheet in
23 front of you defining -- outlining the costs that you
24 shared today?

25 A. I do not have the workpaper or schedule

1 in front of me right now.

2 Q. Did you revise your testimony to include
3 the additional information that you provided today?

4 A. Yes, I updated my testimony to include
5 that number.

6 Q. I mean in written form. Did you
7 physically revise and file supplemental testimony or
8 corrected testimony or updated testimony with the
9 Commission? Prior to today.

10 A. I did not. I did not.

11 Q. Or maybe I should say prior to the
12 hearing. You could have this morning, I guess. So
13 just to be clear you haven't at all, correct?

14 A. I have not.

15 Q. Okay. And the amount that you provided
16 in your updated testimony today is not the actual
17 amount that the Company intends to defer or seek
18 authority to defer from the Commission through this
19 case, correct?

20 A. It's the amount from December 19, 2019,
21 through March 31, 2021, that the Company is seeking
22 to defer. And then this is an additional -- will be
23 additional amounts up and through the implementation
24 of the pending rate case.

25 Q. And what will that amount -- additional

1 amount be?

2 A. I do not know.

3 Q. So again, to answer my question, the
4 number you provided today is not the accurate and
5 complete amount of your deferral request in the
6 application before the Commission today?

7 A. Yes. That number could grow or it could
8 shrink by the end of the period that DP&L is
9 requesting this deferral request.

10 Q. And your expectation is that will grow,
11 correct?

12 A. I don't believe that's my expectation. I
13 don't know what will happen to it. It does vary over
14 time.

15 Q. So you think that the 15 million could go
16 below 15 million even though we have one -- possibly
17 another year of deferral costs to be added to it or
18 credits?

19 A. It is certainly possible based on
20 customer usage patterns, weather, and other items
21 that do affect the amount of decoupling.

22 Q. Okay. Have you done an annual
23 calculation of the amount over the current period to
24 see the likelihood of that occurring?

25 A. I haven't done an analysis in a

1 likelihood of it occurring, but I do know that it
2 does vary because of customer usage, specifically
3 weather.

4 Q. Sure. And it could increase because of
5 customer usage, weather, correct, energy efficiency?

6 A. Correct, it could increase or could
7 decrease.

8 Q. But the point is it's not the amount you
9 are actually requesting from the Commission.

10 A. That's correct.

11 MS. BOJKO: Your Honor, at this time I
12 have no further questions.

13 Thank you, Mr. Teuscher.

14 I think you are on mute, your Honor.

15 EXAMINER SCHABO: Of course, I am.

16 Mr. Eubanks, do you have any
17 cross-examination for this witness?

18 MR. EUBANKS: Your Honor, I do not have
19 any cross-examination for the witness.

20 EXAMINER SCHABO: Mr. Sharkey, do you
21 have any redirect?

22 MR. SHARKEY: Yes, briefly, your Honor.

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REDIRECT EXAMINATION

By Mr. Sharkey:

Q. Mr. Teuscher, you were asked a number of questions today regarding the ESP III Stipulation. Does AES Ohio claim that the ESP III Stipulation gives it any right to defer the decoupling amounts that are at issue in this case?

A. No. The ESP III -- AES Ohio does not -- is not saying the ESP III has any effect or that we're requesting to defer these decoupling costs based on that case.

Q. Turn, if you would, please, to Kroger Exhibit 3 which was the rate case Stipulation in the 15-1830-EL-AIR case. Tell me when you're there.

A. Yes, I'm there.

MS. BOJKO: I'm sorry. Which page, Mr. Sharkey?

MR. SHARKEY: I haven't referred him to a page. I just referred him to a document.

Q. (By Mr. Sharkey) And is it your contention that the DP&L should be permitted to defer its decoupling amounts pursuant to agreements reached in that Stipulation?

A. Yes. In this Stipulation like I previously said, the proposal was to include a higher

1 fixed customer charge, and based on the Staff Report
2 and agreements with other parties, DP&L reduced that
3 fixed customer charge. It would have helped to
4 recover its revenue requirement in this case and
5 implemented revenue decoupling mechanism, so I do
6 believe that this case gives DP&L the authority, or
7 AES Ohio the authority to defer distribution
8 decoupling costs.

9 Q. If DP&L's original proposal with the
10 higher level of customer charge had been maintained,
11 what effect would that have had upon the Company's
12 ability to recover its costs?

13 A. If a higher fixed customer charge was
14 maintained, then there would be -- there would be
15 less of an increase -- I'm sorry, higher fixed
16 customer charge was maintained, there would be less
17 need for the decoupling mechanism because that
18 would -- the fixed variable rate design that was
19 proposed in that case was a form of decoupling
20 itself.

21 Q. If --

22 MS. BOJKO: Objection, your Honor. I
23 move to strike the answer as going beyond the scope
24 of cross-examination. Nobody talked about a fixed
25 variable rate or the reasoning why the customer

1 charge wasn't higher.

2 EXAMINER SCHABO: Mr. Sharkey.

3 MR. SHARKEY: Yes, your Honor.

4 Ms. Bojko, in fact, asked Mr. Teuscher regarding the
5 fixed customer charge and there were numerous
6 questions regarding DP&L's ability to recover its
7 costs and what it -- you know, how the decoupling
8 rider authorized in that case in the distribution
9 rate case related to this case, so those subjects are
10 all tied together.

11 EXAMINER SCHABO: Karen, could you reread
12 the question to me.

13 (Record read.)

14 EXAMINER SCHABO: I am going to overrule
15 the motion to strike.

16 Q. (By Mr. Sharkey) Mr. Teuscher, with the
17 lower customer charge -- strike that. Start over.

18 Would DP&L fully recover its authorized
19 costs from the distribution rate case with the lower
20 customer charge that you described and the
21 elimination of the decoupling rider and disallowance
22 of the decoupling deferral?

23 MS. BOJKO: Your Honor, may I have that
24 question reread?

25 EXAMINER SCHABO: Yes.

1 (Record read.)

2 EXAMINER SCHABO: I am going to need you
3 to break that down into the several questions you
4 actually proposed, Mr. Sharkey.

5 MR. SHARKEY: Okay. I can do that. Give
6 me a minute.

7 Q. (By Mr. Sharkey) Mr. Teuscher, if the --

8 MR. SHARKEY: Well, can I respond, your
9 Honor? It's sort of a --

10 EXAMINER SCHABO: You may.

11 MR. SHARKEY: Sort of the point of the
12 question is that for DP&L to fully recover its
13 authorized costs.

14 EXAMINER SCHABO: Well, let's not get
15 into what answer you actually want to get. Let's ask
16 our question and hope that we get it.

17 MR. SHARKEY: Fair enough, your Honor.

18 MS. BOJKO: Objection, leading your
19 Honor.

20 MR. SHARKEY: Let me try it again.

21 Q. (By Mr. Sharkey) For DP&L to recover its
22 authorized costs from the distribution rate case, can
23 you identify for me what would need to happen in this
24 case?

25 A. The result of this case would need to be

1 an approval of the deferral costs because, again, the
2 customer charge was reduced, and in order for DP&L to
3 recover its full revenue requirement, it needs both
4 that customer charge and the rates from the
5 stipulation and the decoupling mechanism that was
6 approved in that stipulation.

7 MR. SHARKEY: Thank you, Mr. Teuscher.
8 And, your Honor, I have no further questions.

9 EXAMINER SCHABO: Is there any recross
10 based on that -- based on that redirect?

11 MS. BOJKO: Are you trying to go in the
12 same order, your Honor? I do have.

13 EXAMINER SCHABO: I can definitely do
14 that. I can start with Kroger. Mr. Wygonski, do you
15 have any recross?

16 MR. WYGONSKI: Your Honor, I don't have
17 anything at this time if Kim wants to go first.

18 EXAMINER SCHABO: No. It's now or never.

19 MR. WYGONSKI: No then, your Honor, I
20 don't have anything.

21 EXAMINER SCHABO: Okay. Ms. Wilson?

22 MS. WILSON: I don't have anything.

23 EXAMINER SCHABO: Ms. Bojko?

24 MS. BOJKO: Just briefly, your Honor.

25 Thank you.

RECROSS-EXAMINATION

By Ms. Bojko:

Q. The scenario you just talked about with Mr. Sharkey, a couple questions on that, the revenue requirement in a rate case is established by expenses and revenue received during the test year period, correct?

A. Yeah. It's based on the costs of customers.

Q. And no utility under a true rate based construct is guaranteed to get their full revenue requirement, correct?

A. Well, I would say that that's not correct. Some utility may have a decoupling mechanism that does allow them to get exactly the amount that was approved.

Q. I thought you told me previously that wasn't possible because of attrition of customers.

A. That is not possible in DP&L's rate case with DP&L's revenue per customer mechanism but I think you asked about utilities and so some utilities may have a different mechanism and thereby --

Q. So -- so you think that -- that a utility rate base construct is guaranteed to get their revenue requirement; if they have more or less

1 customers, they're only authorized to get the exact
2 revenue requirement that was established in the rate
3 case?

4 A. No. I don't think that's what I said.
5 What I was saying is that there were -- there could
6 be some utilities that had a mechanism that allows
7 them to get a guaranteed revenue requirement.

8 Q. The exact guaranteed -- oh, sorry.

9 A. Yes. It's not the case in DP&L's
10 distribution rate case that was approved in 2018.

11 Q. What utility is guaranteed to get the
12 exact revenue requirement including its established
13 rate of return in its rate case order?

14 A. I don't have any specific examples to
15 point out today but there are revenue decoupling
16 mechanisms that provide a fixed amount of revenue.

17 Q. Okay. So you -- oh, sorry.

18 A. So I was going to say so if a utility was
19 authorized through a revenue requirement of
20 \$300 million and they recovered \$290 million, there
21 would be a decoupling mechanism to get that
22 additional 10, putting them at the exact \$300 million
23 that they were approved for.

24 Q. Okay. My -- I meant to -- if I wasn't
25 clear, is it possible without a decoupling mechanism

1 for a utility to get the exact revenue requirement
2 that was established in a base rate case only?

3 A. I would say it's highly unlikely, but I
4 wouldn't say it's impossible.

5 Q. So in your theory where you were to get
6 the customer charge plus the rates, the base rates,
7 plus the decoupling mechanism, whose -- whose choice
8 was it to eliminate the decoupling required by
9 withdrawing the ESP III Stipulation?

10 A. Well, AES Ohio made a decision, the best
11 decision for the Company and its customers, to
12 withdraw from the ESP III and thereby removing the
13 distribution decoupling rider.

14 MS. BOJKO: Thank you. No further
15 questions, your Honor.

16 EXAMINER SCHABO: All right. Thank you,
17 Mr. Teuscher. You may step down.

18 THE WITNESS: Thank you.

19 EXAMINER SCHABO: We will now address
20 exhibits.

21 MR. SHARKEY: Yes, your Honor. AES Ohio
22 would move for the admission of AES Ohio Exhibit 2.

23 MS. BOJKO: Your Honor, OMAEG renews its
24 motion to strike. After cross-examining the witness,
25 it's become clear that the additional testimony is

1 not relevant to this case as it's not the actual
2 amount that's being requested by the -- by the
3 Company. It wasn't provided before this morning so
4 there is prejudice because no party was able to
5 receive the workpapers. No party was able to ask
6 discovery on that amount, how they got that amount,
7 see the workpapers through discovery, that the
8 workpapers weren't attached to the testimony. They
9 weren't provided to the parties this morning. We
10 have no way to verify the accuracy and no way to
11 cross-examine or challenge the accuracy of that
12 amount.

13 So, therefore, we believe that the
14 additional testimony provided on the stand is highly
15 prejudicial. It's inaccurate, it's incomplete, and
16 it should not be admitted into the record.

17 So I would move to do it one of two ways,
18 strike the additional portion of the testimony that
19 was made live on the stand today, or I object to the
20 admission of the testimony, AES Exhibit 2, with the
21 inclusion of the additional testimony.

22 EXAMINER SCHABO: Are there any other
23 objections to AES Exhibit 2, AES Ohio Exhibit 2?

24 MR. EUBANKS: Staff would join in the
25 objection. Staff would also add that there was no

1 testimony by the witness that he did the actual
2 calculations, therefore, no foundation that he would
3 be able to bring that -- that amount into evidence.

4 MR. WYGONSKI: Kroger will join the
5 motion as well, your Honor.

6 MS. WILSON: So will OCC. Thank you.

7 EXAMINER SCHABO: Okay. At this time I
8 am going -- I don't know if this is now granting the
9 motion to strike or simply admitting the testimony
10 without the update. I agree that without the
11 opportunity to test the number it's unreliable at
12 this point.

13 The only thing that is left with that is
14 what do we do with Ms. Bojko's extensive
15 cross-examination on the updated testimony? And I
16 think the only fair point there would be to actually
17 go back and strike it as well. The problem is I
18 don't know how to specify on the transcript where
19 that is. So we are going to go off the record for
20 one second so I can gather my thoughts.

21 (Discussion off the record.)

22 EXAMINER SCHABO: Back on the record.

23 So I'll repeat that the motion to strike
24 is now granted slash -- sorry this is not super
25 clear, y'all. The motion to strike is not -- is now

1 granted. Stated otherwise the objection to the
2 admission of the updated sentence of his testimony,
3 that objection is granted.

4 I will also be striking the
5 cross-examination that was pointed or directed to
6 that update.

7 And then I will allow briefing on the
8 matter including the extent of the transcript of the
9 cross -- of the cross-examination should be granted.

10 Questions?

11 MS. BOJKO: I'm sorry, your Honor. Could
12 you just repeat the last piece about the
13 cross-examination?

14 EXAMINER SCHABO: So because I can't go
15 back and specify an exact point in the transcript
16 that should be where it starts to strike and where it
17 ends, I think once we all see it, it will be fairly
18 obvious. It was a chunk of cross-examination that
19 you were very much pointed to the new information on
20 the record. If -- if there is some portion of that
21 that some party argues in their initial brief, in
22 your replies feel free to bring that up and brief it.

23 MS. BOJKO: Basically we can argue that
24 some portion of that cross should remain?

25 EXAMINER SCHABO: No. You should use

1 your very best judgment to ensure that no part of
2 that cross comes in starting with your first
3 question.

4 MS. BOJKO: Got it.

5 EXAMINER SCHABO: Sorry. Hold on. Maybe
6 I can --

7 MS. BOJKO: Oh, I can help you, your
8 Honor.

9 EXAMINER SCHABO: It was a very obvious
10 segue. I'm going to rely on y'all to be
11 professionals because that's the best I can do. But
12 if somebody does cite to some part of that transcript
13 in their initial brief, feel free to raise it on your
14 reply. Otherwise know that we know what portions
15 should be in and we are all going to be doing our
16 best.

17 MS. BOJKO: Thank you, your Honor.

18 EXAMINER SCHABO: That was the only
19 objection to AES Exhibit 2 so otherwise AES Exhibit 2
20 comes in, subject to the motions to strike that were
21 granted before examination.

22 (EXHIBIT ADMITTED INTO EVIDENCE.)

23 MR. SHARKEY: Thank you, your Honor.

24 EXAMINER SCHABO: That is all you moved
25 or marked.

1 Mr. Wygonski, do you want to do anything
2 with your exhibits?

3 MR. WYGONSKI: Yes, your Honor. Kroger
4 would move to admit the documents that were
5 previously marked as Kroger Exhibit 2 that was
6 Mr. Teuscher's supplemental testimony in the 2015
7 rate case and Kroger Exhibit 3 which was the
8 Stipulation in the 2015 rate case. Those -- I
9 suppose we can mark them Kroger 1 and Kroger 2, but I
10 would want to keep them for consistency, if possible,
11 as they were marked in the prior disclosure.

12 EXAMINER SCHABO: Okay. Yes. So Kroger
13 Exhibit 2, Kroger Exhibit 3, any objections or
14 commentary?

15 MR. SHARKEY: No, your Honor.

16 EXAMINER SCHABO: Kroger Exhibit 3 is
17 admitted.

18 (EXHIBIT ADMITTED INTO EVIDENCE.)

19 EXAMINER SCHABO: Kroger Exhibit 2,
20 Mr. Teuscher's supplemental testimony, was never
21 introduced or admitted to the record in the 2018 rate
22 case, and it is, therefore, not admitted.

23 MR. WYGONSKI: Thank you, your Honor.

24 EXAMINER SCHABO: Ms. Wilson.

25 MS. WILSON: Yes. I would just like to

1 renew my motion to admit OCC Exhibit 14 which is
2 Mr. Teuscher's testimony in the 20-1651 rate case.

3 EXAMINER SCHABO: Mr. Teuscher's
4 testimony has not even been subject to an
5 adjudicatory process at this point, so Mr. Teuscher's
6 testimony that was filed with the application in Case
7 No. 20-1651 will not be admitted to the record.

8 MS. WILSON: Okay. Thank you.

9 EXAMINER SCHABO: Judge Williams, I
10 believe you're up.

11 EXAMINER WILLIAMS: Looking furiously at
12 the wrong red microphone button but I found the right
13 one.

14 So we are still off the record? Go off
15 the record just briefly.

16 (Discussion off the record.)

17 EXAMINER WILLIAMS: Karen, put us back
18 on, please. I believe our next witness is Mr. Ross
19 Willis, and I will ask OCC who is going to present
20 Mr. Willis?

21 MS. WILSON: I will, your Honor.

22 EXAMINER WILLIAMS: Please call him.
23 Ms. Wilson.

24 MS. WILSON: I'm sorry. I didn't hear
25 what you said.

1 EXAMINER WILLIAMS: Sure. Go ahead and
2 call him and we will have Micah elevate him.

3 MS. WILSON: Okay. OCC calls Ross
4 Willis.

5 MR. SCHMIDT: Mr. Willis, you've been
6 promoted. If you can enable your audio and video.

7 EXAMINER WILLIAMS: Good afternoon,
8 Mr. Willis.

9 MR. WILLIS: Good afternoon.

10 EXAMINER WILLIAMS: Would you raise your
11 right hand.

12 (Witness sworn.)

13 EXAMINER WILLIAMS: Thank you.

14 Ms. Wilson, please proceed.

15 MS. WILSON: Thank you, your Honor.

16 - - -

17 WILLIAM ROSS WILLIS

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

20 DIRECT EXAMINATION

21 By Ms. Wilson:

22 Q. Mr. Willis, do you have before you the
23 testimony that was filed on March 12, 2021, in Case
24 No. 20-140-EL-AAM entitled "Direct Testimony of
25 William Ross Willis"?

1 A. I do.

2 Q. And as of the date of that testimony, was
3 all information contained within true to the best of
4 your knowledge?

5 A. Yes.

6 Q. And if I asked you the same questions
7 today, would your answers be the same?

8 A. Yes.

9 MS. WILSON: Your Honors, OCC would
10 designate Mr. Willis's testimony as OCC Exhibit 13 as
11 listed in the OCC exhibit spreadsheet.

12 EXAMINER WILLIAMS: So noted.

13 (EXHIBIT MARKED FOR IDENTIFICATION.)

14 MS. WILSON: I have no further questions
15 for Mr. Willis. He is now available for cross.
16 Thank you.

17 THE WITNESS: I do have -- excuse me. I
18 do have a correction.

19 MS. WILSON: Okay.

20 EXAMINER WILLIAMS: Ms. Wilson, I will
21 let you go back in time briefly and address your
22 witness's correction in his testimony.

23 MS. WILSON: Thank you, your Honor.

24 Q. (By Ms. Wilson) Mr. Willis, what
25 corrections do you have?

1 A. Yes. It's on page 6, line 14, the
2 "Opinion and Order Case No. 16-395," not "295."
3 That's all.

4 Q. That's your only correction, Mr. Willis?

5 A. That's it.

6 MS. WILSON: Your Honor, I move to note
7 that correction on the record.

8 EXAMINER WILLIAMS: So noted. You've
9 already identified the exhibit, so are you ready to
10 proceed with cross-examination?

11 MS. WILSON: Yes. I'm ready to make him
12 available for cross.

13 EXAMINER WILLIAMS: Thank you very much.
14 Who is going to handle cross on behalf of
15 the Company?

16 MR. SHARKEY: That would be me, your
17 Honor.

18 EXAMINER WILLIAMS: Please proceed,
19 Mr. Sharkey.

20 MR. SHARKEY: Thank you, your Honor.

21 - - -

22 CROSS-EXAMINATION

23 By Mr. Sharkey:

24 Q. Good afternoon, Mr. Willis. As you know,
25 my name is Jeff Sharkey, and I represent AES Ohio in

1 this matter. Do you know whether most of the
2 distribution utilities' costs to provide service to
3 customers are fixed in the short term?

4 A. Well, they're -- they're made up of the
5 revenue requirement.

6 Q. Focusing on utilities' costs and in the
7 short term, would you agree that most of a
8 distribution utility's costs to provide service are
9 fixed?

10 A. For the most part, yes.

11 Q. Okay. And for DP&L you understand that
12 its distribution rates include a variable component
13 based upon the customer's usage of electricity,
14 correct?

15 A. Yes.

16 Q. Okay. So if there are changes in
17 weather, for example, that could cause AES Ohio to
18 underrecover or overrecover its authorized revenue
19 requirement, correct?

20 A. Correct.

21 Q. Okay. And, similarly, if there are
22 additional energy efficiency measures that are
23 implemented within AES Ohio's service territory, that
24 could cause AES Ohio to underrecover its authorized
25 revenue requirement, correct?

1 A. Yes.

2 Q. And, similarly, if there are changes in
3 economic activity or usage within AES Ohio's service
4 territory, that could cause AES Ohio to underrecover
5 or overrecover its authorized revenue requirement,
6 correct?

7 A. Yes.

8 Q. Okay. And then also to the extent
9 customers are implementing distributed generation,
10 that could cause AES Ohio to underrecover its
11 authorized revenue requirement, right?

12 A. Yes.

13 Q. And then your testimony, I understand
14 that there's specifics that you discuss, but from a
15 high level you recommend that DP&L's application in
16 this case be rejected for two reasons, one being that
17 the decoupling rider for ESP III was terminated and
18 the other is that energy efficiency programs have
19 been eliminated effective the end of last year?

20 A. Yes. DP&L voluntarily withdrew from its
21 ESP III and the energy efficiency mandates no longer
22 exist and the Commission has directed all utilities
23 to set their decoupling mechanisms to zero effective
24 January 1 of 2021.

25 Q. Okay. Just so our record is clear, you

1 agree with me that from a high level, that's a fair
2 characterization of the two reasons that you believe
3 that DP&L's application in this case should be
4 denied?

5 A. Yes, as I -- as I just stated.

6 Q. Okay. Thank you. If you would, please
7 direct your attention to the AES exhibits. Do you
8 have those available to you?

9 A. I do.

10 Q. Okay. I would like to direct your
11 attention to AES Exhibit 10 and tell me when you're
12 there.

13 A. That's the 10-3126?

14 Q. Yes, sir.

15 A. Okay.

16 Q. And I'll represent to you this is a
17 December 29, 2010, entry in a Commission proceeding.
18 Initially you've read that during your career, right?

19 A. I have a long time ago.

20 Q. And you understand that in this case the
21 Commission was soliciting comments regarding whether
22 and if it should implement decoupling and if it did
23 implement decoupling how it should be done?

24 A. Well, this -- this -- yeah. This was the
25 Commission at the time was -- was trying to determine

1 as a result of the 2008 Senate Bill 221, which
 2 provided single-issue ratemaking and your energy
 3 efficiency, it was trying to come up with the -- a
 4 rate -- you know, rate designs to deal with that.
 5 And that's what this case was -- was about.

6 Q. Okay. And on page 1 under the background
 7 section, the third sentence, which is line 4 there,
 8 do you see that it says "With this rate design"?

9 A. Sorry. In the Introduction?

10 Q. No, Roman Numeral II Background.

11 A. Oh, okay. "With this rate design," yes,
 12 I see that.

13 Q. It says "With this rate design," which I
 14 believe refers to the rate designs we were talking
 15 about earlier for DP&L, "With this rate design, low
 16 usage customers may pay less than the fixed cost to
 17 serve them while high volume customers may pay more
 18 than their cost of service." Did I read that
 19 accurately?

20 A. Yes.

21 Q. Okay. Do you have an understanding why
 22 "low usage customers may pay less than the fixed cost
 23 to serve them while high volume customers may pay
 24 more than their cost of service"?

25 A. Well, yeah, with the lower -- lower

1 customer -- customer rate you would have to have a
2 higher volumetric rate.

3 Q. Then still in the same section, the next
4 paragraph, the Commission begins that paragraph by
5 discussing decoupling rate designs plural. Do you
6 see that?

7 A. Yes.

8 Q. Okay. And then in the next sentence the
9 Commission refers to a straight fixed variable rate
10 design. Do you see that?

11 A. I do.

12 Q. Can you describe your understanding of
13 what a straight fixed variable rate design is?

14 MS. BOJKO: Objection.

15 EXAMINER WILLIAMS: Basis?

16 MS. BOJKO: Your Honor, I don't see the
17 relevance of this entry that is opening up a case to
18 consider various issues. There's no tie to DP&L.
19 There's no tie to the current application. And
20 there's no tie to the alleged connection to the 2015
21 rate case or the stipulation that was included in the
22 witness's testimony.

23 EXAMINER WILLIAMS: Response,
24 Mr. Sharkey?

25 MR. SHARKEY: Yes, your Honor. The --

1 the core issue in this case was whether or not AES
 2 Ohio should be entitled to implement a rider -- I'm
 3 sorry, should be able to defer its decoupling amounts
 4 and as Ms. -- Mr. Teuscher explained, DP&L agreed to
 5 a lower fixed customer charge in exchange for
 6 implementing decoupling and there's sort of a history
 7 and background that leads to that, and it's directly
 8 responsive to testimony sponsored by Mr. Willis
 9 regarding whether or not the Company should be
 10 permitted to defer the decoupling amounts.

11 EXAMINER WILLIAMS: Okay. I have what I
 12 need. I will overrule the objection. We will allow
 13 some latitude for these questions.

14 MR. SHARKEY: Thank you, your Honor.

15 MS. BOJKO: Thank you.

16 Q. (By Mr. Sharkey) I'll just repeat the
 17 question rather than having it reread to you. The
 18 question simply was, Mr. Willis, can you describe
 19 what you understand straight fixed variable rate
 20 design to be?

21 A. Straight fixed variable rate design is --
 22 is a higher customer charge. You place more of the
 23 burden on a fixed charge and there's a smaller
 24 component that would be variable. But, you know,
 25 what I would like to say is, I mean, this is a 2010

1 case. First of all, I didn't work at OCC in 2010.
 2 The current Consumers' Counsel wasn't even the
 3 Consumers' Counsel in 2010. This was a different
 4 time and place when you had energy efficiency
 5 mandates. You don't have those now. And so we're in
 6 a different time, a different place. The Commission
 7 doesn't even know what it wants to do with -- with
 8 energy efficiency. I believe it's beginning to
 9 schedule workshops to try to develop some policy.
 10 It's just a different time and place than it was in
 11 2010.

12 MR. SHARKEY: Your Honor, my question to
 13 him was to describe what straight fixed variable rate
 14 design is. He answered that, and then he -- then he
 15 began to say "what I would like to say." I would
 16 move to strike everything starting with "What I would
 17 like to say" through the rest of his answer.

18 EXAMINER WILLIAMS: I am going to deny
 19 your motion to strike. You invited testimony in the
 20 2010 case including context, and we are going to
 21 allow that answer to stand.

22 MR. SHARKEY: Thank you, your Honor.

23 Q. (By Mr. Sharkey) Then, Mr. Willis, turn,
 24 if you would, to page 2 of that order.

25 MS. BOJKO: Objection, your Honor.

1 Again, this is not an order. It is an entry.

2 There's no findings. There's no conclusions. It
3 mischaracterizing this 2010 entry.

4 EXAMINER WILLIAMS: I will uphold that
5 objection. Could you refer to the document as what
6 it is, Mr. Sharkey?

7 MR. SHARKEY: I apologize, your Honor. I
8 didn't mean to mischaracterize it.

9 Q. (By Mr. Sharkey) Could you turn to page 2
10 of this entry. And I want to start on line 3 where
11 the Commission refers to a decoupling adjustment.

12 What do you understand a decoupling adjustment to be?

13 A. Well, decoupling in this context again is
14 it's incentivizing the utility to decouple its
15 revenues by encouraging sales, and it's -- there's --
16 for energy efficiency, and so it would incentivize
17 the utility to encourage energy efficiency programs.

18 Q. And the decoupling rider with the revenue
19 per customer methodology that was included in DP&L's
20 distribution rate case we've talked about a lot today
21 would be -- would be an example of a decoupling
22 adjustment as described here?

23 A. Well, I don't -- I don't know that they
24 talked about a revenue per customer. If you could
25 direct me to that. The term decoupling in this

1 context is -- is again referring to providing some
2 sort of incentive to break that link between
3 encouraging sales and to encourage or to incentivize
4 the utility to encourage energy efficiency.

5 Q. Then continuing down into that paragraph,
6 do you see on the far right-hand column there is the
7 word "including" about two-thirds of the way down?

8 A. "Including"?

9 Q. Yes. It says "including economic
10 downturn" about two thirds of the way down in the
11 right-hand column?

12 A. "Including economic downturn, efficiency
13 gains, or weather. Lost revenue adjustments are
14 another rate design tool." So if I could back up,
15 you had me read half a sentence. I would like to
16 read the whole sentence.

17 Q. Well, I was really just trying to direct
18 your attention to a particular section so that you
19 could find it. If I could ask -- my question just is
20 the Commission refers to lost revenue adjustments are
21 another rate design tool. And my question is do you
22 have an understanding what lost revenue adjustment
23 is? You can feel free to read as much of that
24 order -- that entry as you need to.

25 A. Well, in this context lost revenue

1 adjustments are another rate design tool that can be
2 used to compensate utilities for fixed distribution
3 expenses lost as a result of reduced sales.

4 Q. So is it your understanding that a --
5 three possible ways to implement a decoupling
6 methodology would be a straight fixed variable rate
7 design, a decoupling adjustment, or a lost revenue
8 adjustment?

9 A. Yes.

10 Q. I'm sorry. Did you say "yes"?

11 A. Yes.

12 Q. Okay. And then is it your understanding
13 that in this entry the Commission solicited comments
14 regarding whether it should implement decoupling rate
15 designs and, if so, how it should do so?

16 A. I believe it did.

17 Q. Okay. And then I would like you to
18 turn -- I'm done with that exhibit, turn to AES Ohio
19 Exhibit 13 which is an August 21, 2013, Finding and
20 Order in the same case number. Tell me when you're
21 there.

22 A. Okay.

23 Q. I will start with page 2. If you turn
24 there in paragraph 3. About three-quarters of the
25 way down on the far right-hand side, there is a

1 sentence that begins with the phrase "Joint
2 comments." Do you see that?

3 A. Yes.

4 Q. Okay. It says essentially joint comments
5 were filed by Sierra Club, OCC, OEC, NRDC, and the
6 Citizens Coalition, collectively the Ohio Consumer
7 and Citizen -- the Ohio Consumer and Environmental
8 Advocates, or OCEA. Do you see that?

9 A. Yes.

10 Q. And you understand the OCEA to include a
11 reference to comments filed by OCC?

12 A. Again, I didn't work at OCC, and the
13 current Consumers' Counsel wasn't the Consumers'
14 Counsel at this time, but yes.

15 Q. Turn, if you would, then to page 4,
16 paragraph 11. And take as much time as you need to
17 read that paragraph but my question simply is do you
18 agree that the Commission's description of OCEA, OCEA
19 comments were critical of a straight fixed variable
20 rate design?

21 MS. WILSON: Objection. This is an
22 11-year-old document which Mr. Willis has stated
23 several times he was not on staff at that time at OCC
24 and neither was the current Consumers' Counsel
25 Consumers' Counsel then, and Mr. Sharkey is asking

1 Mr. Willis to speak for what the Commission intended
2 by summarizing these comments.

3 EXAMINER WILLIAMS: I am going to allow
4 him to answer and provide context.

5 MS. WILSON: Thank you.

6 A. Well, again, being that I wasn't on --
7 with OCC at the time, I mean, between -- between your
8 choices of a straight fixed variable rate design,
9 that would place pretty significantly higher bills,
10 fixed portion of the bills on -- on low use customers
11 who could cause significant rate shock between that
12 and a decoupling mechanism which was supposed to be
13 symmetrical where not only could there possibly be
14 charges to customers but there could be refunds. Of
15 course, the refunds never came and there was always
16 charges. But given -- given the choices between the
17 two, I can see why OCC at the time chose to oppose
18 straight fixed variable.

19 Q. And continuing in that document page 6.

20 MS. BOJKO: I'm sorry, Mr. Sharkey.
21 Could you tell me which document? I haven't heard
22 anything being marked as exhibits, so I'm a little
23 confused where we are. I apologize.

24 MR. SHARKEY: Sure, Ms. Bojko. I am in
25 AES Ohio Exhibit 13. I thought I said that.

1 MS. BOJKO: And then, I'm sorry, which
2 page?

3 MR. SHARKEY: I'm on page 6.

4 MS. BOJKO: Thank you.

5 MR. SHARKEY: You're welcome.

6 Q. (By Mr. Sharkey) Mr. Willis, page 6,
7 paragraph 18, it says that "OCEA," which again
8 included OCC, "argues that a decoupling adjustment
9 mechanism, including sufficient consumer protections,
10 is preferable to the other proffered alternatives."
11 That sentence is consistent with your testimony and
12 your answer to the prior question regarding why OCC
13 at the time may have opposed the straight fixed
14 variable and preferred a decoupling adjustment,
15 correct?

16 MS. BOJKO: Objection. Your Honor, I
17 think counsel just testified that OCEA is the same
18 thing as OCC, and I think that mischaracterizes the
19 Commission's order as well as the parties in the case
20 and the position of the entity that counsel is
21 referring to.

22 EXAMINER WILLIAMS: Mr. Sharkey, do you
23 want to rephrase?

24 MR. SHARKEY: Sure, your Honor. I
25 believe I said OCEA which included OCC because the

1 Commission order previously had said that OCEA is a
2 defined term that included OCC, but I am happy to
3 rephrase that question.

4 Q. (By Mr. Sharkey) So on page 6, do you
5 believe, Mr. Willis, that OCEA was an organization
6 that included OCC?

7 A. Yes.

8 Q. Okay. And --

9 MS. BOJKO: I'm sorry. I am going to
10 object, your Honor. It's not an organization that
11 includes OCC. I think the Commission was defining it
12 as multiple parties that jointly filed. I think
13 that's an important distinction that we need to
14 clarify for the record.

15 EXAMINER WILLIAMS: I agree, Ms. Bojko.
16 Mr. Sharkey, can you be more careful in
17 asking your question as to what OCEA is?

18 MR. SHARKEY: Okay.

19 Q. (By Mr. Sharkey) Now, you understand OCEA
20 is a term that the Commission is using to refer to
21 comments filed by a group that includes OCC?

22 MS. BOJKO: Objection. Your Honor, they
23 are joint comments filed by multiple parties. That's
24 different than comments filed by a group that
25 includes -- the group does not include OCC. They

1 were joint comments, I'm presuming with individual
2 signatures, and entities signed on in their own
3 capacity.

4 EXAMINER WILLIAMS: You are correct,
5 Ms. Bojko.

6 MS. WILSON: OCC joins that objection. I
7 think it's merely an acronym for purposes of this.

8 EXAMINER WILLIAMS: Objection remains
9 sustained. Mr. Sharkey, can you be more careful in
10 asking your question as to whether you're intending
11 to arrive at both OCEA and all of the different
12 entities that are contained within that for purposes
13 of this entry -- or this finding and order or
14 whether, in fact, you have something specific to OCC?

15 MR. SHARKEY: I guess I'm a little
16 confused. I thought the comments filed here and they
17 are entitled "Comments by the Ohio Consumer and
18 Environmental Advocates," and they are signed by OCC
19 and a variety of other parties. And I am just
20 going -- want to refer to the fact that OCC signed
21 those comments, and the Commission was using the term
22 OCEA to refer to the entities that had signed those
23 comments.

24 EXAMINER WILLIAMS: So I -- my question
25 then is in paragraph 2 of this finding and order the

1 Commission indicates joint comments were filed by
2 Sierra Club, et cetera, and then they say
3 collectively Ohio Consumer and Environmental
4 Advocates, or OCEA, your account is those joint
5 comments, those were, in fact, one set of comments
6 that were signed by multiple authors.

7 MR. SHARKEY: That's correct, your Honor.

8 EXAMINER WILLIAMS: Ms. Bojko, response
9 to that additional information?

10 MS. BOJKO: Your Honor, my point is they
11 are signed in the individual capacity. Counsel keeps
12 calling them the same group or the same entity.
13 Parties may collectively get together and file joint
14 comments but that doesn't mean that OCC is speaking
15 for all of the individual parties in their individual
16 capacities or vice versa. I don't think that you can
17 take something that was done on a joint basis and
18 attribute it solely to OCC's opinion, et cetera.

19 EXAMINER WILLIAMS: Okay. So I agree
20 that the witnesses are not going to be able to
21 testify as to the mental thoughts of the additional
22 OCEA entities for purposes of this testimony, though
23 I do believe he is able to testify regarding to the
24 extent he knows what OCC's position was in response
25 to those comments.

1 Mr. Sharkey, can you ask a question along
2 those lines?

3 MR. SHARKEY: Okay.

4 Q. (By Mr. Sharkey) Do you understand this
5 sentence that I have read to you previously, page 6,
6 paragraph 18, first sentence, to reflect a position
7 that was adopted by OCC and perhaps others that a
8 decoupling adjustment mechanism was better than a
9 fixed rate variable mechanism?

10 MS. WILSON: Objection.

11 MS. BOJKO: Objection.

12 MS. WILSON: Mr. Willis wasn't on OCC's
13 staff at that time, and he can't -- he doesn't have
14 personal knowledge of why OCC or if they made that
15 argument.

16 EXAMINER WILLIAMS: Okay. I am going to
17 overrule the objection. I am going to allow Mr.
18 Willis to testify to the extent he has any knowledge
19 or opinion here as an expert as to OCC's thought
20 process in regard to this 2013 finding and order.

21 A. Well, again, I was on the PUCO Staff at
22 the time. And the current Consumers' Counsel wasn't
23 the Consumers' Counsel when -- when this document was
24 created. But my -- I believe the reason why OCC
25 would have taken -- would have -- again, would have

1 preferred the decoupling was that -- over the
2 straight fixed variable was just as I said before,
3 that the straight fixed variable would create rate
4 shock to the low end use and that the decoupling was
5 intended to be singular and that your -- where there
6 could be charges but there also could be refunds.
7 The refunds never came. And there's always charges
8 to consumers but I -- I believe that's the reason why
9 OCC would have taken the position that they did at
10 the time.

11 Q. Thank you, Mr. Willis. If you turn,
12 please, to page 19 of that document. Are you there?

13 A. I am.

14 Q. Okay. Paragraph 63, about two-thirds of
15 the way down on the right-hand side, there's a
16 sentence that begins "The Commission." Tell me when
17 you see that.

18 A. I see it.

19 Q. Okay. It says there "The Commission
20 believes that, given the comments filed in this
21 proceeding, as well as recent experience by the
22 natural gas utilities, the rate structure that may
23 be -- that may best accomplish these policy goals is
24 the straight fixed variable rate design." And again,
25 you would agree that was a rate design that OCC had

1 opposed?

2 MS. BOJKO: Objection, your Honor. We're
3 just reading Commission entries into the record.
4 There's been no foundation laid that this entry or
5 order has anything to do with the current case.
6 Straight fixed variable is not part of DP&L's current
7 request. There's no foundation, with all due respect
8 to Mr. Willis, that he can speculate to why OCC
9 agreed to something or didn't agree or filed comments
10 when he wasn't even at the agency and there is a
11 different Consumers' Counsel and he has never worked
12 for that other Consumers' Counsel. It's pure
13 speculation.

14 I think it's inappropriate to read this
15 into the record. If he wants to cite it in his legal
16 brief, then that's fine, but we can't just sit here
17 and read these documents from a 2010 case when energy
18 efficiency mandates were in place to what's going on
19 today with DP&L's request. There's nothing to do
20 with straight fixed variable rate design and DP&L's
21 request or Mr. Willis's testimony.

22 EXAMINER WILLIAMS: Mr. Sharkey.

23 MR. SHARKEY: Yes, your Honor.
24 Mr. Willis is being tendered as an expert witness in
25 this case. Not just a fact witness but an expert

1 witness regarding decoupling in general, rate
 2 regulation in general, and whether DP&L's deferral
 3 request should be granted. So he's certainly capable
 4 of answering my question, if he understands it, is
 5 whether straight fixed variable rate design is the
 6 rate design that was opposed by the OCC as described
 7 in the Commission's order. I didn't ask him -- I did
 8 not ask him what the Commission thought. I did not
 9 ask him what OCC thought. I just asked him whether
 10 straight fixed variable rate design was a method
 11 opposed by OCC as described earlier in the order.

12 EXAMINER WILLIAMS: I will overrule the
 13 objection. I will let him answer the question.

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

16 (Record read.)

17 A. Again, I really -- I mean, you're having
 18 me read, you know, a couple sentences out of a
 19 21-page document. I see here they're talking about
 20 recent experience by natural gas utilities. That's
 21 what the sentence says, "The Commission believed
 22 that, given the comments filed in this proceeding, as
 23 well as recent experience by the natural gas
 24 utilities, the rate structure that may best
 25 accomplish these policy goals is the straight fixed

1 variable rate design." That's what it says.

2 Q. Okay. Turn, if you would, please,
3 Mr. Willis, to AES Ohio Exhibit 14.

4 A. Could you tell me what that is?

5 Q. Yeah. Those are proposed tariffs, not
6 approved tariffs, proposed tariffs from.

7 A. 15-1830?

8 Q. From DP&L's distribution rate case in the
9 2015 application.

10 A. I'm there. I'm there.

11 Q. Okay. And then if you would, please,
12 turn to page 65 of --

13 MS. WILSON: Mr. Sharkey, do you mean 65
14 of the PDF or the tariff page 65?

15 MR. SHARKEY: Tariff page 65. It says 65
16 in the upper right-hand corner.

17 A. Well, what PDF page, if I could ask?

18 Q. I'll find that for you. I'm working on a
19 print.

20 A. I mean, there's different page numbers
21 for different --

22 Q. PDF page 71.

23 MS. WILSON: That's page 2 of 3 of
24 revised AES 22?

25 MR. SHARKEY: I'm sorry, no. Up in the

1 right-hand corner it says Schedule E-2-1, page 65 of
2 137.

3 A. I'm sorry. I don't see that.

4 EXAMINER SCHABO: Can we go off the
5 record for a minute?

6 EXAMINER WILLIAMS: Karen, we are off the
7 record, please.

8 (Discussion off the record.)

9 EXAMINER WILLIAMS: Okay. We are back on
10 the record.

11 Mr. Sharkey. You're muted, sir.

12 MR. SHARKEY: Thank you, your Honor.

13 Q. (By Mr. Sharkey) Mr. Willis, do you have
14 before you page 65 of AES Ohio Exhibit 14?

15 A. I do.

16 Q. Okay. And this is a red line document.
17 As I represented to you earlier, that was DP&L's
18 proposed tariffs and I have some questions there.
19 You see down where it says "customer charge"?

20 A. Yes.

21 Q. And it reflects crossed out the figures
22 4.25 and later \$5 and reflects a new addition of
23 \$13.73. Do you see that?

24 MS. BOJKO: Objection, your Honor.

25 EXAMINER WILLIAMS: Basis?

1 MS. BOJKO: We have laid no foundation
2 whatsoever about this document, whether the witness
3 is familiar with this document. It's my
4 understanding this is a draft. It's not even the
5 final tariffs, so I would also object to relevancy.

6 EXAMINER WILLIAMS: I'll sustain the
7 objection. I will let you work on foundation,
8 Mr. Sharkey.

9 MR. SHARKEY: Okay.

10 Q. (By Mr. Sharkey) Mr. Willis, did you work
11 on DP&L's 2015 rate case?

12 A. Yes.

13 Q. Okay. And among the things you would
14 have reviewed is DP&L's application and proposed
15 tariffs when you were working on that case?

16 A. I was responsible for the overall revenue
17 requirement. There was another individual in our
18 office that looked at the -- looked at the tariff
19 area.

20 Q. Would you -- in terms of your review of
21 the revenue requirement, would one of the things you
22 need to understand be DP&L's proposed rates?

23 A. I saw your rates. I know that you
24 requested in the application I believe it was 13.73
25 for the residential customer charge.

1 Q. Okay. And it was your understanding in
2 that case that DP&L had proposed to implement a rate
3 methodology that was a straight fixed variable
4 methodology?

5 A. Yeah. And again, it was for the energy
6 efficiency mandates that was in effect at the time.

7 Q. Turn then, if you would, to DP&L
8 Exhibit 20 -- I'm sorry, I said DP&L. AES Ohio
9 Exhibit 20 which -- which was the ESP III application
10 in 16-395.

11 A. Okay.

12 Q. Did you work on DP&L's ESP III case?

13 A. I did.

14 Q. You reviewed DP&L's application at the
15 time?

16 A. Yes.

17 Q. Okay. Turn, if you would, to page 9,
18 paragraph No. 21.

19 A. Okay.

20 Q. Okay. And you see there it says "DP&L
21 seeks approval of a distribution decoupling rider to
22 account for the decoupling associated with energy
23 efficiency requirements"? Do you see that?

24 A. Yes.

25 Q. And that sentence is consistent with a

1 phrase you used a number of times where you said the
2 decoupling was intended to relate to energy
3 efficiency, right?

4 A. Yes.

5 Q. Okay. That's all I have for that. Turn,
6 if you would, then to AES Ohio Exhibit 19.

7 A. And that is?

8 Q. That is the Amended Stipulation and
9 Recommendation in the ESP III case, 16-395. Tell me
10 when you have that document.

11 A. I don't see that. I have to go back.
12 Amended application.

13 Q. Are you there?

14 A. I'm getting there. Okay.

15 Q. Do you have that open?

16 A. Yep.

17 Q. Okay. Turn, if you would, to page 14.
18 Are you there?

19 A. Yes.

20 Q. Okay. You see there there's a
21 subparagraph B that is titled "Decoupling Rider"?

22 A. Yes.

23 Q. Okay. And the first sentence says that
24 "The decoupling rider will include lost revenues
25 currently recovered through the energy efficiency

1 rider." Do you see that?

2 A. Yes.

3 Q. Okay. Again, that's consistent with some
4 of your testimony earlier regarding de -- the
5 relationship between decoupling and energy efficiency
6 riders, right?

7 A. Yes.

8 Q. Okay. And then there's a following
9 sentence. It says "All other matters relating to the
10 decoupling rider, including but not limited to, cost
11 allocation term and rate design shall be addressed in
12 the pending -- pending distribution case" and then
13 there is a case number. Do you see that?

14 A. Yeah. I believe that case number is
15 incorrect. I think that was the AIR case, the rate
16 case. But, yeah, 15-1830.

17 Q. That is a good catch. I didn't notice
18 that was a bad letter, but you're right. I believe
19 you would be correct. That was intended to be
20 referring to the distribution rate case. And so you
21 understand then that whether the scope and the rate
22 design for the decoupling rider was to be addressed
23 in the distribution rate case?

24 A. The approval was given in 16-395, the ESP
25 case, and the rate design was to be addressed in the

1 15-1830 rate case.

2 Q. Okay. Turn, if you would, then to AES
3 Ohio Exhibit 15 which was the Staff Report that was
4 issued in the 15-1830 distribution rate case.

5 A. Okay.

6 Q. Okay. Turn, if you would, to page 36 of
7 this document.

8 A. Okay.

9 Q. Okay. The last paragraph in that
10 document, just take a moment to read it to yourself,
11 and then I will ask you a couple of questions about
12 it.

13 A. Okay.

14 Q. Tell me when you're ready.

15 A. I'm ready.

16 Q. Okay. It's true in that paragraph that
17 Staff recommends rejecting DP&L's proposed \$13.73
18 customer charge and instead implementing a customer
19 charge of \$7.88?

20 A. Correct.

21 Q. And that would be a -- a -- step back.

22 If you look in the prior paragraph about
23 in the middle of the case, it says in -- the sentence
24 that says "In this case." Do you see that?

25 A. No. Paragraph -- you are at the

1 paragraph before the last one.

2 Q. Yeah. The paragraph begins "evaluating
3 rate design," about halfway down, maybe a little less
4 than halfway down. There's a line that -- the
5 beginning of the line says "Expenses." The first
6 sentence in -- the first full sentence begins "In
7 this case."

8 A. "In this case," yeah.

9 Q. Okay. Take a minute, if you would, to
10 read those two sentences and then tell me when you
11 are ready. So it's that sentence and also the
12 sentence that begins with the word "However."

13 A. Start with the sentence that says "In
14 this case"?

15 Q. Correct. And then read that sentence and
16 the following sentence.

17 A. Okay.

18 Q. And do you understand that to be a
19 recommendation by Staff that it's too soon for DP&L,
20 as it was named then, to move for a straight fixed
21 variable rate design and that it would be better to
22 wait until Smart Grid was implemented and there was
23 more information about DP&L's rates and charges?

24 A. Yes.

25 Q. Okay. Next document I want to ask you

1 about is AES Ohio Exhibit 17.

2 A. I would like to -- it is talking about
3 the -- until sufficient customer demand data is
4 available and collected through the Smart Grid
5 initiatives or Smart Grid initiative in Ohio.

6 Q. Yes, it does. If you would then move on
7 to AES Ohio Exhibit 16 which were objections to that
8 Staff Report that were filed by OCC.

9 A. Okay.

10 Q. Turn, if you would, to page 10 of those
11 objections.

12 A. Okay.

13 Q. Okay. And objection 10 says that "The
14 Staff Report properly rejected DP&L's proposal for
15 straight fixed variable rate design, but the Staff
16 Report's proposed \$7.88 customer charge is too high."
17 Do you see that?

18 A. Yes.

19 Q. Okay. And then the last sentence there
20 says "The customer charge utilizing the current rate
21 design methodology should be \$6.60." Do you see
22 that?

23 A. Yes.

24 Q. Do you understand OCC to be supportive of
25 Staff's rejection of a straight fixed variable rate

1 design and actually be articulating the position
2 Staff should have gone even further and proposed
3 something lower than 7.88?

4 A. Well, that was because Staff when they
5 calculated their rate, they included \$28.2 million in
6 minimum size transformers, and the minimum size
7 transformers account should not be included in the
8 calculation. That was -- that was -- but, yeah,
9 generally supported the rate design methodology but
10 we felt Staff made an error.

11 Q. And the fixed charge should have been
12 even lower than the \$7.88 figure that was proposed by
13 Staff is OCC's position?

14 A. Because they included something that we
15 felt shouldn't have been included, yes.

16 Q. Okay. Turn then, if you would, to AES
17 Ohio Exhibit 17. It's the Stipulation and
18 Recommendation.

19 A. Yes, it is.

20 Q. And you are aware that OCC signed this
21 document?

22 A. Yes.

23 Q. Okay. And then --

24 A. It was the -- we signed the 15-1830 rate
25 case settlement, not the 16 -- not ESP.

1 Q. That is my understanding as well,
2 Mr. Willis. And you have before you the rate case
3 Stipulation DP -- I'm sorry, OCC signed, correct?

4 A. Right.

5 Q. Which was Exhibit 17. Turn, if you
6 would, to page 14 of that document. Tell me when
7 you're there.

8 A. Okay.

9 Q. Okay. You see there that Stipulation in
10 paragraph 2 says "The customer charge for residential
11 customers shall be \$7," correct?

12 A. Yes.

13 Q. And that's consistent with the position
14 OCC took in its comments that the customer charge
15 should be lower than the \$7.88 that the Staff had
16 proposed, right?

17 A. Yes.

18 Q. Turn then, if you would, to page 10.

19 A. This was a settlement that was signed by
20 many parties.

21 Q. Yes, it was.

22 A. Not just OCC. Okay.

23 Q. You see there that -- that is a paragraph
24 that is implementing the revenue decoupling rider
25 that was authorized in the ESP III case that we

1 looked at earlier?

2 A. Yeah. The ESP III, 16-395 case,
3 authorized the decoupling and this provided the rate
4 design for it.

5 Q. Okay. And the decoupling rider as
6 proposed here, as you understand it, could be a -- a
7 debit or a credit to customers.

8 A. Well, yeah, in theory. I mean, it never
9 works that way. It always ended up being a charge;
10 but, yeah, in theory it could be.

11 Q. Okay. And you see on paragraph 3A that
12 the methodology would use a revenue per customer
13 methodology, correct?

14 A. Yes.

15 Q. Okay. So if -- for example, we talked
16 about weather could change. So if weather was
17 particularly harsh in a given period, that would
18 suggest a higher -- would lead to higher usage of
19 electricity by customers, would result in a credit,
20 all things equal, to the decoupling rider, right?

21 A. In theory, yes.

22 Q. Okay.

23 A. It could.

24 Q. The opposite is true if weather is
25 particularly mild, then it could be a debit or an

1 increase to the revenue per customer methodology.

2 A. Yeah. Again though, revenue decoupling
3 was authorized for energy efficiency. If this
4 Commission decides to go down this path of
5 guaranteeing revenue for all utilities, that's a
6 horrible precedent setting. You'll have every single
7 utility in here wanting their revenue requirement
8 guaranteed. You know, you get an opportunity to earn
9 your revenue requirement and -- and within -- built
10 within that revenue requirement is a rate of return
11 that has a little bit of risk built into it, quite a
12 bit of risk.

13 So, you know, if this Commission goes
14 down this path, again, I believe it's a horrible
15 precedent setting, you are going to have every
16 utility in here guaranteeing the revenue requirement.
17 The Commission has never done that. Never.

18 Again, revenue decoupling was always
19 about the energy efficiency mandates. That's what
20 that was all about. All of that case that you had me
21 go through in the 2010, it was about Senate Bill 221
22 and the energy efficiency mandates and how are we
23 going to go about -- how was the Commission going to
24 go about decoupling those sales and encouraging or
25 incentivizing energy efficiency mandates?

1 And so you're shifting. DP&L is wanting
2 to shift here now to talk about the economics and,
3 you know, weather and if that's what -- if that's --
4 if that's the direction that this Commission goes,
5 it's going down a very, very slippery slope.

6 MR. SHARKEY: Your Honor, my question was
7 on the operation of the calculation, how a revenue
8 per customer methodology would be calculated. I
9 didn't ask about whether it's a good idea, and I move
10 that Mr. Willis's sort of lengthy speech on that
11 topic be strick -- be struck.

12 EXAMINER WILLIAMS: I'll overrule your
13 motion. Context regarding the development of these
14 charges including whether they all are in context
15 responses to energy efficient -- energy efficient
16 mandates certainly appeared relevant and within his
17 expertise, so we will allow him to provide that
18 context as part of his testimony.

19 Please proceed.

20 MR. SHARKEY: Thank you, your Honor.
21 Your Honor, I just noticed that there's a box that
22 shows Carpenter Lipps & Leland, but I don't see
23 Ms. Bojko, so I don't know if she is with us or not.
24 I just wanted to pause and see if we wanted to wait
25 for Ms. Bojko or what the status was there.

1 EXAMINER WILLIAMS: Mr. Sharkey, I see
2 the same thing. We will go off the record for a
3 second and see if Ms. Bojko is within earshot or
4 possibly having technical difficulties.

5 (Discussion off the record.)

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

8 Mr. Sharkey.

9 MR. SHARKEY: Thank you, your Honor.

10 Q. (By Mr. Sharkey) You recall earlier,
11 Mr. Willis, that the ESP III Stipulation had said
12 that all other matters relating to decoupling would
13 be resolved in the distribution rate case?

14 A. I believe it said, you know, that --
15 something to the effect that the ESP in 16-395
16 authorized the decoupling, and it set the rider at
17 zero, but all other matters related to rate design
18 shall be addressed in the rate case, something along
19 those lines.

20 Q. As you recall, we looked at -- you
21 testified earlier OCC, in fact, agreed to the revenue
22 per customer rate design for the decoupling rider,
23 correct?

24 A. Well, it did in the context of an overall
25 package.

1 Q. Okay. And just in terms of the
2 mechanics, so my record is clear, you agree that
3 changes in weather can result in a debit or credit to
4 the decoupling rider, correct, using a revenue per
5 customer methodology?

6 A. Yes.

7 Q. Okay. And, similarly, changes in energy
8 efficiency usage could result in a credit or a debit
9 to the decoupling rider?

10 A. Well, again, that's the theory. It never
11 worked out that way but.

12 Q. And, similarly, changes in economic
13 activity or usage generally by customers could lead
14 to a change in the decoupling rider when it's
15 calculated on a revenue per customer basis?

16 A. Yes. Again, this was part of an overall
17 package but the decoupling rider was authorized for
18 DP&L at that time to meet its energy efficiency
19 mandates.

20 Q. Okay. And you understand that part of
21 the exchange in this Stipulation to which DP&L, OCC,
22 and others agreed was that there would be a
23 significantly lower customer charge and that DP&L
24 would be able to implement a revenue per customer
25 decoupling methodology?

1 A. Yes, but that was certainly -- I mean,
2 it -- nobody forced DP&L to withdraw from the ESP
3 III; and when you did that, you lost your authority.

4 Q. We'll come back to that question and
5 subject. Can you turn to AES Ohio Exhibit 18 which
6 is testimony that you filed in that same distribution
7 rate case. Tell me when you have that.

8 A. Okay.

9 Q. And this document is testimony filed by
10 you in support of the Stipulation we were just
11 looking at, correct?

12 A. Yes.

13 Q. Okay. And turn, if you would, to page 5.

14 A. Okay.

15 Q. And there's a question that says "Does
16 the Settlement as a package benefit DP&L's customers
17 and the public interest," and you say "Yes. Benefits
18 to the costumers and the public interest in the
19 Stipulation include" and then there is a series of
20 bullets, correct?

21 A. Yes.

22 Q. I want to focus your attention on a
23 bullet that's on page 8. Tell me when you're there.

24 A. I'm there.

25 Q. Okay. The second bullet on that page

1 says "The residential customer charge has been
2 reduced from DP&L's proposed \$13.73 per month rate to
3 \$7 per month." Do you see that?

4 A. Yes.

5 Q. And why did you describe that as a
6 benefit?

7 A. Because it maintained the current
8 customer charge methodology. Going from 4 or 5
9 dollars to, you know, tripling the customer charge is
10 excessive for -- for low use customers.

11 Q. And do you know, Mr. Willis, whether the
12 Commission approved that Stipulation in the rate case
13 we looked at earlier?

14 A. They did.

15 Q. Okay. And do you know whether OCC sought
16 rehearing of that?

17 A. No.

18 Q. So I have this right, OCC did not seek
19 recovery?

20 A. We did not seek rehearing.

21 Q. Let me ask you some questions about
22 DP&L's termination of ESP III that you referred to
23 earlier. You understand that in the ESP III
24 Stipulation that we looked at earlier that that
25 included a distribution modernization rider for DP&L

1 which was its name then?

2 A. Yes. And the -- the Supreme Court, Ohio
3 Supreme Court, determined that it was unlawful, and
4 the PUCO modified the ESP III to remove it.

5 Q. Okay. And you understand that in
6 response to that issue of the Commission -- that
7 order of the Commission, that AES Ohio filed a notice
8 to withdraw its application in that case and ask that
9 it be permitted to revert to ESP I?

10 A. I believe it filed in that case, and I
11 believe it also filed something in the '08 ESP I
12 case. And at that time the PUCO, the Commission,
13 told DP&L/AES that it was not authorized. The --
14 there was several riders that DP&L wanted to continue
15 and the Commission told DP&L at that time that it
16 wasn't authorized to -- to continue the decoupling
17 rider along with a couple others.

18 Q. Okay. So just so we're clear, it was
19 your understanding that in reverting to the ESP I
20 DP&L asked to continue the decoupling rider, but the
21 Commission as to that specific rider concluded that
22 DP&L didn't have a right to do so?

23 A. That's correct.

24 Q. Okay. Let me ask you some questions
25 maybe a little more broad. Initially you would agree

1 with me that a deferral is a regulatory asset on a
2 company's balance sheet?

3 A. Yes, regulatory asset or regulatory
4 liability.

5 Q. Okay. And a deferral of a regulatory
6 asset can be recorded only if its probable the
7 utility will recover that item in the future?

8 A. Yes.

9 Q. Okay. And one purpose of a deferral is
10 to give investors an accurate picture of a utility's
11 financial condition, correct?

12 A. I -- I think the purpose of a deferral is
13 to seek recovery of something that you would
14 otherwise have to write off.

15 Q. Would you agree with me that another
16 purpose of a deferral is to give investors an
17 accurate understanding of the financial condition of
18 the Company so they can make decisions about whether
19 to invest equity or to loan money to the utility?

20 A. Again, it -- deferrals, you know, one of
21 the standards that the Commission uses is, you know,
22 whether the financial integrity of the utility is in
23 jeopardy as a result of that. So to the extent that
24 that's the case, sure.

25 Q. Okay. And as to a utility request for a

1 deferral, if the utility is recovering the amount at
2 issue in rates already, then you would agree with me
3 that a return -- a deferral should not be authorized?

4 A. Correct.

5 Q. Okay. And I want to talk about an
6 example of tree trimming which I think you raised, if
7 I recall correctly, at your deposition so let's talk
8 about that. For tree trimming there have been
9 instances in which a utility has been permitted to
10 defer costs over and above what was included in the
11 utility's rates, correct?

12 A. Typically there's -- there's a baseline
13 that's included in an average level of -- including
14 whether it be storm costs or vegetation management
15 and then, you know, anything over and above that,
16 then to the extent that it meets the standards that
17 the PUCO Staff reviews, then they would ask for -- it
18 would be included in a rider.

19 You know, if there was something
20 significant, a major storm or something, then, you
21 know, possibly could request that through a rider if
22 they met -- met the requirements. But, yeah, if you
23 had something in a base rate and it's over and above
24 that, then it would be the recovery through a rider;
25 or if it's significant enough, it would be the

1 utility could ask for a deferral.

2 Q. So our record is clear, you are aware of
3 instances in which utilities have been permitted to
4 defer costs associated with tree trimming that are
5 over and above what was included in the utility's
6 base rates?

7 A. Not deferrals, riders, which usually
8 there would be a rider. I don't know that you would
9 say defer -- deferring tree trimming. I don't think
10 that's -- I don't think that would rise to the level
11 of a deferral.

12 Q. Okay. You also mentioned storms. Are
13 you aware of instances in which storm expenses might
14 be so extraordinary that a utility might be permitted
15 to defer those storm costs if they weren't recovered
16 in a utility's rates?

17 A. Yes.

18 Q. And just so we're clear, a utility's base
19 rates would typically have some amount of recovery
20 associated with ordinary run-of-the-mill storms that
21 happen regularly in a utility's service territory,
22 right?

23 A. Yes.

24 Q. And it would be your view it would be
25 inappropriate to permit a deferral as to those types

1 of expenses?

2 A. Correct.

3 Q. And it's the ones that are not
4 recovered --

5 A. They are extraordinary, extraordinary.

6 Q. So you would agree one prerequisite to a
7 deferral is that the item at issue is not being
8 recovered in rates?

9 A. Yes.

10 Q. Okay. And you agree with me that the
11 decoupling rider is currently not being recovered by
12 DP&L?

13 A. That's right.

14 Q. Turn, if you would, please, to actually
15 the question before that. It's your understanding
16 that a revenue required for a utility is intended to
17 equal the utility's costs including the utility's
18 cost of capital?

19 A. Well, the revenue requirement includes
20 revenue. It includes expenses. It includes taxes.
21 It includes a return on investment. So it
22 encompasses all of that. It included in that rate of
23 return, and investment is a -- is a risk, you know,
24 part of the return on equity.

25 Q. So I'm clear, the revenue requirement

1 when it's set is intended to allow the utility to
2 recover its costs including the costs of capital?

3 A. Yes. And it includes revenue. There's a
4 revenue requirement and included in that is your
5 current operating income and then you have ex -- your
6 rate of return.

7 Q. All right. Turn, if you would, then to
8 AES Ohio Exhibit 6.

9 A. 01-3229?

10 Q. Yes. It a Commission Entry in that case.
11 It's dated July 8, 2003. Do you have that in front
12 of you?

13 A. Just a minute. This is CG&E?

14 Q. Correct. Do you have that in front of
15 you now, sir?

16 A. I do.

17 Q. The paragraph 1 about halfway down, you
18 see that CG&E was seeking Commission authority to
19 defer the incremental amount of residential bad-debt
20 expense resulting from the prior winter's combination
21 of colder than normal weather and the
22 Commission-ordered moratorium on service
23 disconnections? Do you see that?

24 A. I do. I want to -- I guess I need to
25 point out in -- during this time frame that I was

1 deployed in some foreign location in Pakistan or
2 Afghanistan, so I am not really familiar with this
3 case.

4 Q. Okay. Well, let me ask more broadly
5 then, you understand that a bad debt is revenue that
6 a utility could not recover, correct?

7 A. Yes.

8 Q. Okay. And take a look -- well, that's
9 all the questions I want to ask about there. If you
10 would, take a look at AES Ohio Exhibit 3 which is not
11 in the Excel spreadsheet, but it was sent separately
12 as an attachment to my e-mails. This one wasn't
13 available through the Commission's DIS website.

14 A. Yes.

15 Q. Okay. And that's an order dated
16 October 1 of 1992 and it's captioned in the Matter of
17 the Commission's Investigation into the Impact of
18 Demand-Side Management Programs and Power Purchases
19 on the Profitability of Electric Utilities. And
20 first question to you is that order predates the
21 demand-side management mandates that were included in
22 Title 49, correct?

23 A. Yeah. That probably would have been part
24 of Senate Bill 3 maybe.

25 Q. Do you know when the deregulation was

1 enacted in Ohio? Does 1999 ring a bell?

2 A. Some -- I --

3 Q. Do you recall when the energy
4 efficiency --

5 EXAMINER WILLIAMS: I'm sorry. Make sure
6 we get a good transcript here. Mr. Willis, is your
7 response you don't recall?

8 THE WITNESS: I don't recall. I don't
9 recall.

10 EXAMINER WILLIAMS: Mr. Sharkey.

11 MR. SHARKEY: Thank you, your Honor.

12 Q. (By Mr. Sharkey) Do you recall -- strike
13 that.

14 Do you know that in 2008 is when the
15 General Assembly implemented legislation that
16 required -- included energy efficiency mandates?

17 A. Right. That was as part of Senate Bill
18 221.

19 Q. Okay.

20 A. And that's what prompted the comments,
21 that 10 dash whatever case, that we spent time on
22 going through and talking about straight fixed
23 variable and decoupling.

24 Q. Okay. And you are aware that the
25 Commission has dealt with demand-side management

1 program issues predating the 2008 regulation,
2 correct?

3 A. Yes.

4 Q. And if you would turn to page 3 of 7 of
5 that document, page numbers in the upper right-hand
6 corner.

7 A. Okay.

8 Q. Towards the bottom paragraph 14A.

9 A. Okay.

10 Q. Okay. It says "The Commission agrees in
11 part with the recommendation in Finding 6 that
12 deferral of lost revenues should also be permitted
13 for pilot DSM programs," and I will represent to you
14 6 is part of a Staff recommendation that is included
15 on page 6. If you feel you need to read that to
16 answer my question, please do so. But my question
17 just is is this an example of the Commission
18 authorizing a deferral of lost revenues?

19 A. Okay. In paragraph 6 it would probably
20 be good if we read the whole -- "The electric
21 companies agree the lack of opportunity to accumulate
22 lost revenues for a significant period of time
23 between IRP," integrated resource planning
24 proceedings, I believe that's what that means,
25 "creates a distinctive -- or disincentive in the

1 process."

2 Q. Mr. Willis, could you tell me where you
3 are reading from so we can join you?

4 A. Yes. Paragraph 6 that -- the paragraph
5 you referred me to referred back to.

6 Q. Okay. I didn't see where you were. So
7 go ahead. I apologize for the interruption.

8 A. "Utilities also stand together in their
9 opinion that shared savings should receive the same
10 accounting treatment, Ohio Edison, Monongahela, and
11 the AEP companies, claiming that all effective DSM
12 programs effectively reduce demand, energy, and
13 revenue on a permanent basis, which to include
14 educational demonstration and experimental or pilot
15 DSM measures and a list of programs eligible for
16 deferral of lost revenues."

17 Q. Mr. Willis, if I can inject, the
18 paragraph 6 I was referring you to was a Staff
19 recommendation that's on page 6 of the document,
20 not -- so there's Staff recommendations that the
21 Commission attached that start on page 4 and that was
22 page 6 -- that was the paragraph 6 I was referring
23 you to. Different paragraph 6.

24 A. Okay. Well, I'm sorry. I can't comment
25 on this. I don't know what you are talking about.

1 Q. Okay. Well, generally speaking let me
2 ask you this question, paragraph 14A that we looked
3 at earlier is authorizing the deferral of lost
4 revenues, in part, that result from DSM programs,
5 correct?

6 A. In Finding 6, okay, so I was reading
7 Finding 6, you're saying that's not -- that's not the
8 right one, so I really don't know what you are
9 talking about.

10 Q. Okay. Let me help. So paragraph 14 --
11 paragraph -- page 3, are you there?

12 A. Yeah.

13 Q. Page 3, par -- there is paragraph 14A.

14 A. Yeah.

15 Q. And it says the Commission agrees, in
16 part, with the recommendation in Finding 6.

17 A. Show me where Finding 6 is.

18 Q. That -- that is on page 6 of the
19 document. Are you on page 6?

20 A. It says "The approach being proposed is
21 to base the lost revenues associated with a given DSM
22 program on engineering estimates of demand and energy
23 savings associated with specific technology on which
24 that program is based. For example, the difference
25 in annual consumption between two similar appliances

1 of different efficiencies can be estimated based on
2 their known energy consumption characterization."

3 And then it goes on.

4 Q. Yes, it does. My question to you is on
5 page 3, paragraph 14A, where -- where the Commission
6 says "The Commission agrees in part the
7 recommendation in Finding 6 that deferral of lost
8 revenues should be permitted for pilot DSM programs
9 is an example of a Commission authorization of a
10 deferral of revenues related to DSM programs," right?

11 A. For energy efficiency, yes.

12 Q. Okay. Turn, if you would, then to AES
13 Exhibit 21.

14 A. Which one is that?

15 Q. That is an application by the Ohio Power
16 Company in Case No. 20-602. Sorry. I made a
17 mistake. It's not an application. It's an order in
18 the Matter of the Application of the Ohio Power
19 Company.

20 A. Okay.

21 Q. So you understand this to be an
22 application by Ohio Power Company relating to
23 COVID-19?

24 A. Yes.

25 Q. This is an order again in the Ohio Power

1 case related to COVID-19, right?

2 A. Right, right.

3 Q. Okay. Turn, if you would, to page 18,
4 paragraph --

5 A. 18?

6 Q. Yeah, page 18.

7 A. Okay.

8 Q. Okay. And before I ask you questions
9 about that, you are aware that COVID-19 may have led
10 to changes in economic activity or energy usage in a
11 utility service territory, right?

12 A. It may have.

13 Q. Okay. We are still figuring that out.
14 We don't know for sure but that's possible that's one
15 of the consequences of COVID-19, right?

16 A. Again, it may have.

17 Q. Okay. And paragraph -- page 18,
18 paragraph 52, the three lines down there is a
19 sentence that begins "AEP Ohio, therefore." Do you
20 see that?

21 A. Yes.

22 Q. Okay. "AEP Ohio, therefore, proposes to
23 implement a rate mechanism to track, defer, and
24 recover uncollectible costs," and my question to you
25 is uncollectible costs are revenue that the utility

1 couldn't collect, correct?

2 A. That's charges that the consumer wasn't
3 able to pay.

4 Q. Okay. And do you know whether the
5 Commission authorized AEP Ohio in this order to defer
6 those uncollectible costs?

7 A. They did. It's an expense to the
8 utility.

9 MR. SHARKEY: Your Honor, I am winding
10 down, perhaps done. Can I get a 5-minute break to
11 talk to my client and review my notes?

12 EXAMINER WILLIAMS: Let's go off the
13 record here.

14 (Discussion off the record.)

15 EXAMINER WILLIAMS: Back on, Ms. Gibson.

16 Mr. Sharkey, I will let you make your
17 statement on the record.

18 MR. SHARKEY: Sure, thank you, your
19 Honor. At this time I have no further questions for
20 Mr. Willis.

21 EXAMINER WILLIAMS: Thank you,
22 Mr. Sharkey.

23 As we were off record during break, I
24 advised the parties that Intervenors would be allowed
25 to consider or provide cross-examination that was not

1 deemed friendly cross-examination.

2 Mr. Wygonski, I think you've offered you
3 don't have any cross-examination at this time; is
4 that correct?

5 MR. WYGONSKI: That is correct, your
6 Honor. I do not have any cross-examination for the
7 witness.

8 EXAMINER WILLIAMS: Thank you.
9 Ms. Bojko, any cross on behalf of OMAEG?

10 MS. BOJKO: No, your Honor. Thank you.

11 EXAMINER WILLIAMS: Thank you. On behalf
12 of staff, any cross-examination?

13 MR. EUBANKS: No, your Honor.

14 EXAMINER WILLIAMS: Okay. With that then
15 I will allow redirect, Ms. Wilson.

16 MS. WILSON: I have no redirect at this
17 time.

18 EXAMINER WILLIAMS: No more questions?

19 MS. WILSON: No more questions.

20 EXAMINER WILLIAMS: Excellent. Thank
21 you.

22 Mr. Willis, you are excused. Thank you.

23 THE WITNESS: Thank you.

24 EXAMINER WILLIAMS: We will take up
25 exhibits. Ms. Wilson.

1 MS. WILSON: Sorry. I move to admit OCC
2 Exhibit No. 13, the direct testimony of Mr. Willis.

3 EXAMINER WILLIAMS: Thank you. Any
4 objections from any of the parties? Exhibit 13 is
5 deemed admitted.

6 (EXHIBIT ADMITTED INTO EVIDENCE.)

7 EXAMINER WILLIAMS: Mr. Sharkey.

8 MR. SHARKEY: Yes, we have a lengthy list
9 of exhibits. Would you like me to -- some of them
10 are Commission orders or entries which we would be
11 asking for administrative notice only, of course, and
12 others were other types of documents that we would
13 move to admit.

14 EXAMINER WILLIAMS: Why don't we just
15 take our time and go through them individually and
16 then we can just decide them on a case-by-case basis.

17 MR. SHARKEY: Fantastic. So the first
18 one, your Honor, would be AES Exhibit 3 which was a
19 Commission Finding and Order that we would ask for
20 administrative notice to be taken.

21 EXAMINER WILLIAMS: Administrative notice
22 is taken.

23 MR. SHARKEY: Exhibit 6 was a Commission
24 entry in 01-3229 case. Again, we request
25 administrative notice.

1 EXAMINER WILLIAMS: Administrative notice
2 is taken.

3 MR. SHARKEY: The next one is Exhibit 8
4 which is a Commission Finding and Order which we
5 would ask administrative notice be taken.

6 EXAMINER WILLIAMS: You say 8. Could you
7 mean 18?

8 MR. SHARKEY: No, your Honor, 8. It was
9 the Second Finding and Order in the ESP I case.

10 EXAMINER WILLIAMS: Okay. We will take
11 administrative notice of that.

12 MR. SHARKEY: Okay. The next one is
13 Exhibit 10 which was a Commission entry in the
14 10-3216 case.

15 EXAMINER WILLIAMS: Administrative
16 notice.

17 MR. SHARKEY: Okay. The next item would
18 be Exhibit 11 which were comments filed by OCC in
19 that same case, and we would move to admit those
20 comments.

21 EXAMINER WILLIAMS: Ms. Wilson, do you
22 have a position on that?

23 MS. WILSON: They are readily accessible
24 on DIS in a different case. I don't think they
25 necessarily need to be.

1 MR. SHARKEY: Actually, your Honor, I did
2 not ask Mr. Willis about those comments. I referred
3 to them, but I didn't question him on those, so I
4 will withdraw my motion as to Exhibit 11.

5 EXAMINER WILLIAMS: Motion withdrawn.
6 That's accepted.

7 MR. SHARKEY: Okay. Exhibit 13 was a
8 Commission Finding and Order in that same case, and I
9 would ask for administrative notice.

10 EXAMINER WILLIAMS: Administrative notice
11 granted.

12 MR. SHARKEY: Exhibit 14 was DP&L's
13 proposed tariffs in its 2015 distribution rate case;
14 I would move to admit.

15 EXAMINER WILLIAMS: Anything from the
16 parties on that motion?

17 MS. WILSON: I object on the relevance.

18 EXAMINER WILLIAMS: Anything besides
19 relevance? I'll admit AES 14.

20 (EXHIBIT ADMITTED INTO EVIDENCE.)

21 MR. SHARKEY: Next, your Honor, AES 15
22 was the Staff Report in the 15-1830 case. We would
23 move to admit that.

24 EXAMINER WILLIAMS: Anything from the
25 parties?

1 All right. We will admit AES 15.

2 MR. SHARKEY: AES Ohio 16 was -- was
3 OCC's objections to the Staff Report in that same
4 case. We would move to admit.

5 EXAMINER WILLIAMS: I'll admit the
6 objections.

7 (EXHIBIT ADMITTED INTO EVIDENCE.)

8 MR. SHARKEY: AES Exhibit 17 was the
9 Stipulation and Recommendation in that same case; we
10 would move to admit.

11 EXAMINER WILLIAMS: I'll --

12 MS. BOJKO: I'm sorry, your Honor. Which
13 case is that, the '15, the rate case?

14 MR. SHARKEY: Yes, Ms. Bojko.

15 MS. BOJKO: I think that's already
16 been -- I think that was Kroger No. 3 on my list,
17 15-1830 stip.

18 EXAMINER SCHABO: It is.

19 MR. SHARKEY: You may be correct. I
20 don't have Kroger Exhibit 3 open in front of me.
21 Again, whatever your Honor's preference is. If it's
22 already in, we don't -- we don't need to admit AES
23 17.

24 EXAMINER WILLIAMS: We will confirm for
25 my own benefit here. Give me one second.

1 MR. SHARKEY: Yeah, I found it, your
2 Honor.

3 EXAMINER WILLIAMS: So you are going to
4 withdraw your request on AES 17?

5 MR. SHARKEY: Yes.

6 EXAMINER WILLIAMS: Got it.

7 MR. SHARKEY: 18, AES Ohio 18 was the
8 testimony of Mr. Willis in that distribution rate
9 case, and we would move to admit.

10 EXAMINER WILLIAMS: Admitted.

11 (EXHIBIT ADMITTED INTO EVIDENCE.)

12 MR. SHARKEY: 19 was the Stipulation from
13 DP&L's ESP III case, and we would move to admit.

14 EXAMINER WILLIAMS: Admitted.

15 (EXHIBIT ADMITTED INTO EVIDENCE.)

16 MR. SHARKEY: 20 was DP&L's application
17 for approval of its ESP III case, and we would move
18 to admit that.

19 EXAMINER WILLIAMS: Admitted.

20 (EXHIBIT ADMITTED INTO EVIDENCE.)

21 MR. SHARKEY: And 21 was a finding and
22 order in the I believe it was Ohio Power application,
23 and we would ask for administrative notice.

24 EXAMINER WILLIAMS: Administrative notice
25 granted.

1 MS. BOJKO: I had an objection to that
2 one, your Honor, on relevancy. We're admitting an
3 AEP Ohio -- or we're taking administrative notice in
4 the Dayton case of an AEP Ohio case?

5 EXAMINER WILLIAMS: Yeah. The parties
6 are certainly welcome to brief whether that case is
7 relevant and what bearing it has here, what it is,
8 the Commission order. It was discussed during the
9 course of cross-examination. We'll take
10 administrative notice of its existence.

11 MS. BOJKO: Thank you, your Honor.

12 EXAMINER WILLIAMS: Thank you. Anything
13 else from any of the parties relative to Witness
14 Willis?

15 Okay. With that then I will turn it back
16 over to Judge Schabo, and she'll take our next
17 witness.

18 EXAMINER SCHABO: Mr. Eubanks, are you
19 ready to present your witness?

20 MR. EUBANKS: Yes. I would like to call
21 to the stand David Lipthrott.

22 EXAMINER SCHABO: Mr. Schmidt, if you
23 could help us out.

24 MR. SCHMIDT: You have been promoted. If
25 you can enable your audio and video.

EXAMINER SCHABO: There you are. Good afternoon, Mr. Lipthratt. Could you raise your right hand for me.

(Witness sworn.)

EXAMINER SCHABO: Thank you.

Mr. Eubanks.

MR. EUBANKS: Yes. I would like to have marked as Staff's Exhibit 1 David Lipthratt's prefiled testimony filed -- docketed on March 19, 2021.

EXAMINER SCHABO: So marked.

(EXHIBIT MARKED FOR IDENTIFICATION.)

- - -

DAVID M. LIPTHRATT

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

DIRECT EXAMINATION

By Mr. Eubanks:

Q. Mr. Lipthratt, do you have what's been marked as Staff Exhibit 1 before you?

A. I do.

Q. Could you identify the document.

A. It is my prefiled testimony in this case.

Q. Was it prepared by you?

A. Yes, sir.

1 Q. Is it a true and accurate copy?

2 A. Yes, sir.

3 Q. Would you like to make any changes to
4 your testimony?

5 A. No, sir.

6 Q. If I were to ask you the same questions,
7 would you provide the same answers?

8 A. Yes, sir.

9 MR. EUBANKS: I would like to move to
10 have Staff's Exhibit 1 placed into evidence, subject
11 to cross, and I offer the witness for
12 cross-examination.

13 EXAMINER SCHABO: I'll defer the ruling
14 until after cross-examination but thank you.

15 Let me start with OMAEG. Ms. Bojko, do
16 you have any cross for this witness?

17 MS. BOJKO: No, I do not. Thank you,
18 your Honor.

19 EXAMINER SCHABO: Okay. Mr. Wygonski, on
20 behalf of Kroger's?

21 MR. WYGONSKI: Kroger does not have
22 anything for the witness, your Honor. Thank you.

23 EXAMINER SCHABO: All right. Ms. Wilson
24 or Ms. O'Brien, do you have any cross for this
25 witness?

1 MS. WILSON: We do not.

2 EXAMINER SCHABO: Okay. Who will be
3 handling examination on behalf of the Company?

4 MR. SHARKEY: That will be me, your
5 Honor.

6 EXAMINER SCHABO: Okay. Mr. Sharkey.

7 MR. SHARKEY: Yes, thank you, your Honor.

8 - - -

9 CROSS-EXAMINATION

10 By Mr. Sharkey:

11 Q. Mr. Lipthratt, as you know, my name is
12 Jeff Sharkey. I represent AES Ohio in this matter.
13 Have you been I would say in the gallery so that
14 you've heard testimony throughout the day by the
15 prior witnesses?

16 A. Generally speaking, yes. There's been
17 times where there's been some technical difficulty or
18 maybe stepping away for a moment but, yes, generally
19 speaking I've been here throughout the day.

20 Q. Okay. Fantastic. And in particular
21 there was a number of questions I asked for -- to
22 Mr. Willis, and I had intended to sort of duplicate
23 that, but it seems unnecessary now, so my question to
24 you were you here for all of Mr. Willis's cross?

25 A. I was, but I had a bit of difficulty

1 following the exhibits, so I was in attendance, I was
2 listening, but I was not as -- following along as
3 closely as Mr. Willis.

4 Q. Okay. That's fantastic. That's fine,
5 rather. We'll look at the exhibits with you if we
6 need to. So let me start sort of big picture. You
7 are aware that -- strike that.

8 Do you agree that most of the
9 distribution utilities' costs to provide service to
10 customers are fixed in the short term?

11 A. I would agree to that.

12 Q. Okay. And that many utilities' rates
13 including DP&L include a variable component based
14 upon electric usage?

15 A. Yes, sir.

16 Q. Okay. And as a result, for example, if
17 there are changes in weather as compared to the
18 weather in the test period, that can result in a
19 utility underrecovering or overrecovering its
20 approved cost, right?

21 A. Yes. I would agree to that.

22 Q. And, similarly, for energy efficiency, if
23 energy efficiency measures are implemented in a
24 greater or lesser level, that can also result in a
25 utility underrecovering or overrecovering its

1 approved costs?

2 A. Yes.

3 Q. Okay. And then again, if there are
4 changes in economic activity or other changes that
5 leads to changes in customer usage, that can also
6 lead to an underrecovery or overrecovery?

7 A. I would agree to that.

8 Q. Okay. I spent some time asking
9 Mr. Willis about a 2010 Commission proceeding. Did
10 you hear those questions?

11 A. Yes. I was -- I did hear them. I am not
12 recalling them fully; but, yes, I was listening to
13 that.

14 Q. Okay. When did you join the Commission,
15 Mr. Lipthrott?

16 A. Approximately 10 years ago now, somewhere
17 along those lines.

18 Q. Would you have worked on that 2010 case?
19 Do you recall?

20 A. No. I could check real quick. I'm
21 pretty confident I would not have worked on that
22 case.

23 Q. Okay. Generally speaking, would you
24 agree that one method to implement a -- let me step
25 back.

1 You understand that a decoupling rate
2 design is a term that could include multiple
3 different methods to implement decoupling, right?

4 A. Could you restate that, please?

5 Q. Sure. Are there multiple ways that a
6 decoupling rate design could be implemented?

7 A. Not claiming to be a decoupling expert, I
8 believe that to be true.

9 Q. Okay. One of those methods is a straight
10 fixed variable design that would include a high
11 customer charge?

12 A. That is correct.

13 Q. Okay. And another methodology would be a
14 revenue per customer type of decoupling adjustment?

15 A. Yes, sir.

16 Q. Okay. And do you know if in that 2010
17 case the Commission indicated a preference for a
18 straight fixed variable methodology as opposed to a
19 decoupling adjustment with a revenue per customer
20 method?

21 A. I do not recall. I mean, I do not know.

22 Q. Okay. You're aware that the Company in
23 2015 filed a distribution rate case?

24 A. Yes, sir.

25 Q. Okay. And do you know whether the

1 Company in that proposal, its proposed tariffs
2 included a high customer charge, higher customer
3 charge than previously implemented?

4 A. I'm going off memory. I think the
5 Company's application included a customer charge of
6 approximately \$13, somewhere in that range. However,
7 I'm not sure what the Company -- I do not recall what
8 the Company's previous -- or at the time of that
9 application what their existing customer charge was.
10 But if my memory serves me correctly, I think the
11 Company proposed somewhere around \$13.

12 Q. Okay. And do you have available to you
13 AES Ohio Exhibit 15 which was the Staff Report in
14 that case?

15 A. One second.

16 EXAMINER SCHABO: I'm sorry. Could we go
17 off the record for just one minute?

18 (Discussion off the record.)

19 EXAMINER SCHABO: We can go back on the
20 record. Thank you for your patience, everyone.

21 Mr. Sharkey.

22 MR. SHARKEY: Thank you, your Honor.

23 Q. (By Mr. Sharkey) Mr. Lipthrott, do you
24 have a copy of Exhibit 15 in front of you?

25 A. Yes, sir. I have it up.

1 Q. Great. If you would, please, turn to
2 page 36 of this document.

3 A. I'm there.

4 Q. Okay. The bottom -- at the very bottom
5 of that page, there is a paragraph that begins by
6 stating "The Applicant is proposing a \$13.73 customer
7 charge." Do you see that?

8 A. Yes, sir.

9 Q. And it then at the end says that "Staff
10 recommends a customer charge of \$7.88." Do you see
11 that?

12 A. Yes, sir.

13 Q. Okay. And in the prior paragraph in the
14 middle sentence that begins "In this case," do you
15 see that?

16 A. Yes.

17 Q. Okay. Take a moment, if you would, to
18 read that sentence and the following sentence, if you
19 would, and then I will ask you questions about that,
20 but you can read those to yourself.

21 A. Okay. I've completed reading it.

22 Q. Okay. Initially does this reflect --
23 does this refresh your recollection that in this
24 application DP&L had proposed to shift fixed demand
25 charges into a customer charge?

1 A. Yeah. Mainly that second line really
2 kind of triggers my memory on that but it's still a
3 bit vague.

4 Q. Okay. And is that -- this then reflects
5 that the Staff is recommending against that
6 methodology and, in fact, later a significantly lower
7 customer charge, correct?

8 A. I think so.

9 Q. Okay. Then if you would, Mr. Lipthratt,
10 refer to Exhibit AES Ohio 17 which was the
11 Stipulation and Recommendation in DP&L's distribution
12 rate case.

13 A. Okay. I have it up now.

14 Q. Okay. If you could turn with me to page
15 14 of it.

16 A. I'm there.

17 Q. And you see in paragraph 2 where the
18 Stipulation says "The customer charge for residential
19 customers shall be \$7"?

20 A. Yes, sir.

21 Q. And that's consistent with and even a
22 little bit lower than the Staff's recommended change
23 to DP&L's proposed customer charge, correct?

24 A. That is correct.

25 Q. Okay. And I should have asked this

1 question earlier, you recall Staff signed this
2 Stipulation, right?

3 A. I believe I was the one filing testimony
4 in support of so, yes, that's correct.

5 Q. Turn, if you would, then to page 10 of
6 that Stipulation.

7 A. I'm there.

8 Q. Okay. Paragraph 3A reflects that revenue
9 decoupling would be implemented on a revenue per
10 customer basis, correct?

11 A. Yes, sir.

12 Q. And do you recall earlier when you told
13 me that changes in economic activity, weather, and
14 energy efficiency could cause a mismatch between a
15 utility's recovery and its approved costs?

16 A. Maybe I didn't -- your question again? I
17 do recall that conversation but.

18 Q. I don't want to misrepresent your
19 testimony so let me ask this question differently.
20 If -- I will break it down for you. Given a -- using
21 a revenue per customer methodology, if there are
22 changes in weather as opposed to the test year, that
23 could lead to a debit or credit to a decoupling rider
24 as established in the Stipulation, right?

25 A. Yes, that's my understanding.

1 Q. Okay. And the same question for energy
2 efficiency, if that's different than how it existed
3 in the test year, that can result in a debit or
4 credit to the decoupling rider?

5 A. Yes. I just want to note though my
6 understanding is that the decoupling methodology
7 revenue per customer, again, just to highlight is
8 based off a residential and secondary to when you
9 talk about the authorized return -- not authorized
10 return, authorized revenue requirement, you have got
11 to recognize that -- that's only a portion of the
12 authorized revenue requirement, not the entire
13 amount.

14 Q. Thank you for that clarification. And
15 then, similarly, if there are changes in economic
16 activity as compared to the test year, that could
17 result in a debit or credit to the revenue decoupling
18 rider, again specific to the revenue requirement to
19 the specific classes you classified earlier.

20 A. Yes, sir, that's correct.

21 Q. Okay. And we discussed earlier the two
22 different methods for implementing decoupling
23 included a straight fixed variable methodology with a
24 high customer charge or a revenue decoupling
25 methodology on a revenue per customer basis. Do you

1 recall that?

2 A. Yes, sir.

3 Q. Okay. Then did you understand in this
4 Stipulation that part of the exchange was that DP&L
5 would lower the customer charge significantly and in
6 exchange get to implement a decoupling rider on a
7 revenue per customer basis?

8 A. I've heard some of that back -- some of
9 those conversations around that issue. I'm not sure
10 if I can fully agree with that having been part of
11 those settlement negotiations. There was a lot of
12 give and take in both the rate case and the ESP but
13 particularly with the rate case. I mean, the
14 Company -- the Staff agreed to some TCAA provisions
15 that we would have -- otherwise would have
16 recommended a different approach.

17 We recognized a number of expense --
18 expense categories that we -- for Stipulation
19 purposes we included in the revenue requirement. We
20 reduced several of the revenue -- revenue values. We
21 granted the Company -- or we supported the Company
22 having a deferral with no carrying charges for
23 vegetation management. So, you know, to say it's one
24 for one, I am not really sure there was a lot of
25 moving parts, a lot of compromise, a lot of give and

1 take. So I don't know if it's a direct like
2 correlation that it was one for the other. Again, it
3 was a global package.

4 Q. Thanks for that clarification. You do
5 agree that a revenue per customer methodology and a
6 high customer charge are -- actually strike that. I
7 already asked you that question. I'll just move on.

8 Let me ask you some questions about the
9 termination of the ESP III. You recall that in the
10 ESP III case the Commission had originally approved a
11 Stipulation for DP&L that included a distribution
12 modernization rider?

13 A. Yes, sir.

14 Q. Okay. And then in late 2019, you recall
15 that the Commission issued an order that invalidated
16 DP&L's DMR and ordered it to remove the DMR from its
17 tariff?

18 A. I am aware of that. The timing I don't
19 have captured to memory, but I trust your date.

20 Q. Okay. And that DP&L at the time then
21 withdrew its application in ESP III and asked the
22 Commission to allow it to return to ESP I?

23 A. Yes, sir.

24 Q. Okay. And do you believe that DP&L's
25 request to withdraw from ESP III and to implement ESP

1 I was a prudent decision by the Company?

2 A. Having not been involved with the -- let
3 me put it this way, I was not involved in any kind of
4 financial analysis forecast proformas that I recall
5 on -- on the specifics of what was in play, if you
6 will. I can't personally speak to whether it was a
7 prudent decision. I was not involved in that. I
8 have not seen any data, only what, you know, I -- I
9 don't have -- I don't have direct firsthand knowledge
10 on it to know if that was a prudent decision or not.

11 Q. Okay. Let me ask you some sort of
12 broader, more theoretical questions. Would you agree
13 that a deferral is typically a regulatory asset that
14 exists on the Company's balance sheet?

15 A. Regulatory asset or liability, yes, sir.

16 Q. And the deferral can be recorded only as
17 probable the utility will recover that item to the
18 extent it's an asset in the future?

19 A. Yes, sir.

20 Q. Do you believe that one of the purposes
21 of a deferral is to give investors an accurate
22 picture of a utility's financial condition?

23 A. I heard that question with Mr. Willis.
24 You know, to be frank with you, I've never seen that
25 in any of the literature, any of the -- I have not

1 seen that -- that reasoning included in any kind of
2 description around regulatory -- regulatory assets
3 and the accounting for it. Generally I've seen the
4 benefit of it or the reason for it, if you will, is
5 to align the revenues and your expenses, you know, to
6 not have mismatched so maybe smooth out rate shock
7 or; but, you know, I'm not -- I've never actually
8 seen that. It seems reasonable, but I have never
9 seen it in a definition or anything like that.

10 Q. All right. Let me ask you some questions
11 about, just as an example, for how deferrals work. I
12 want to sort of use storms as an example here and we
13 were to start with the utility's test year. Suppose
14 in the utility's test year the utility had a number
15 of sort of small typical storms and one unusual and
16 extraordinary large storm.

17 You would agree that in setting the
18 utility -- and those were during the test year. You
19 would agree if setting utility rates, it would be
20 typical practice to normalize the weather and exclude
21 expenses related to the extraordinary --
22 extraordinary large storm from the utility's rate?

23 A. There's actually a couple of ways you can
24 go about it. Minor storms, if you will, nonmajor
25 storms, you typically build a normalized test year

1 value in. For major storms you can build likewise
 2 like a baseline value in base rates. You can pull
 3 them all out and recover it through a rider. If you
 4 include some portion in base rates, I would suggest
 5 and Staff has, you know, recommended in the past that
 6 a rider be created to recover or pass back any
 7 difference from what was established in the base
 8 rates. So there's a couple ways you can go about it.

9 Q. Okay. And if a utility has had its --
 10 has its base rates in place and those -- those rates
 11 include -- those costs include typical storms but no
 12 extraordinary storms, and then the utility later
 13 experiences an extraordinary storm, have you seen
 14 instances in which utilities have sought to defer
 15 expenses related to such storms?

16 A. I have, yes, sir.

17 Q. That's a fairly typical process, right?

18 A. Yes, sir.

19 Q. Okay. And in the deferral you would
 20 agree with me that the utility should not be
 21 authorized to recover expenses associated with
 22 typical storms that we've already talked about, that
 23 they already included some utilities' rates, right?

24 A. If I am hearing you correctly, yeah, I
 25 agree. That's the purpose of base rates, to get

1 those typical normalized values recovered in base
 2 rates. The deferrals generally speaking for as -- as
 3 Staff sits -- our criteria refers to, are they
 4 material -- material? Are they -- is it within the
 5 Company's control? Is it financial harm? Is it
 6 incent? So I do want to make a point just because --
 7 unless there is some agreement or Commission order
 8 already in place that there would be guaranteed
 9 deferral of X type of storm, should a company
 10 theoretically experience a -- a major storm that was
 11 not embedded in base rates, Staff would still yet go
 12 through its evaluation process and see if it kind of
 13 checks -- if it kind of meets the six-part test. It
 14 is not automatic is what I am saying.

15 Q. And focusing on the smaller storms that
 16 you, I believe, testified should not be included in a
 17 deferral, you would agree with me that for one
 18 prerequisite to a defer is that the items at issue
 19 are not at that time being recovered otherwise by a
 20 utility in its rates?

21 A. Yes. If I am hearing you right, there
 22 should be no double recovery. If they are already
 23 recovering those costs, they should not be deferring
 24 them as well.

25 Q. Do you agree, Mr. Lipthratt, that

1 utilities' revenue requirement should equal the
2 utilities' costs including its cost of capital?

3 A. Yes, sir, I would agree to that.

4 Q. If you would, turn to AES Ohio Exhibit 6.

5 A. Is this the Case No. 01-3229-EL-AAM
6 Cincinnati Gas & Electric Company?

7 Q. Yes, sir, it is.

8 A. Yeah, I got it open.

9 Q. Okay. And if you look in paragraph 1,
10 you will see that it's a request by CG&E to defer an
11 incremental amount of residential bad-debt expense
12 resulting from the prior winter's combination of
13 colder than normal weather and the Commission's
14 ordered moratorium on service disconnections? Do you
15 see that?

16 A. Yes, sir.

17 Q. Okay. And bad-debt expense is revenue
18 that a utility was not able to collect, correct?

19 A. No, sir. No, sir, that's not correct.
20 Your revenues -- when a company reports revenues,
21 just because -- so when a company reports revenues or
22 recognizes revenues, they also recognize accounts
23 receivable. Accounts receivable is a balance sheet
24 item. Your revenues no matter how much you collect
25 are not going to deviate. They are set. They are

1 locked in. They are not going to go up or down.
 2 Your accounts receivable, however, you may not
 3 collect that full amount depending on how much a
 4 customer pays. And, therefore, when customers do
 5 pay, the Company recognizes cash and writes down that
 6 accounts receivable and any unpaid or unrecovered
 7 amount is an -- is an uncollectible expense and
 8 that's typically recorded to like 904 or what have
 9 you but that is not -- that in no way changes the
 10 amount of revenues that the Company is recognizing.

11 And along those lines typically for
 12 ratemaking purposes, some level of bad debt is
 13 typically built into base rates. It's already -- the
 14 Company has already kind of typically compensated for
 15 it or there is some gross-up factor typically in
 16 riders or some other fashion to account for that bad
 17 debt, so I would not agree that it's -- I would not
 18 agree with your statement.

19 Q. Okay. So let me break that down a little
 20 bit. A -- you understand that in the past when
 21 there's been a -- bad weather, particularly harsh
 22 weather, that the Commission has entered a moratorium
 23 preventing utilities from cutting off service to
 24 customers for failing to pay their bills.

25 A. Yes, yes, sir.

1 Q. Okay. And such an order would result in
2 a utility's instability to collect from the
3 delinquent customers?

4 A. It would be unable to collect on those
5 accounts receivables.

6 Q. Okay. And that would reduce the cash
7 received by the Company during that period of time.

8 A. Potentially so, you know, revenues are --
9 revenues minus expenses result in your net income.
10 Once a company runs its financial statements, their
11 net income is already accounted for. That accounts
12 receivable there is some timing issues so
13 theoretically over time it could impact your net
14 income, but it's not going to impact your revenues.

15 Q. Turn, if you would, then to AES Ohio
16 Exhibit 3.

17 A. Is that attached? Let me pull that up.

18 Q. Yeah. That one is not included in the
19 Excel spreadsheet because it was not available on the
20 Commission's dividend payments so it was separately
21 attached to an e-mail when we sent out exhibits.

22 A. Yeah. Let me put my hands on this. I
23 apologize. I should have had this up. I have it
24 open now.

25 Q. And you see that that document is dated

1 October 1, 1992, correct?

2 A. Yes, sir.

3 Q. And you would agree with me it does
4 predate the energy efficiency mandates that were
5 implemented in 2008 by the General Assembly?

6 A. I will have to take your word on that
7 because I wasn't even graduated from high school in
8 1992, so my understanding of what was taking place at
9 that time is very limited.

10 Q. Okay. At a minimum we can agree 1992 was
11 before 2008, right?

12 A. I can agree to that.

13 Q. Okay. And were you aware based on your
14 time at the Commission that it had previously
15 considered and addressed demand-side management
16 programs before 2008?

17 A. I am very vaguely aware. I am not -- I
18 don't have a strong level of ex -- strong knowledge
19 on the history of DSM energy efficiency so that's,
20 yeah.

21 Q. Okay. And do you know whether the
22 Commission is pre -- has before 2008 energy
23 efficiency mandates allowed utilities to defer lost
24 revenue associated with demand-side management?

25 A. I don't know for a fact. I am not aware.

1 Q. Okay.

2 A. But I would say I am aware -- I am
3 familiar -- familiar enough with energy efficiency
4 demand-side management to point out that, you know,
5 that is something that the Commission would likely
6 want to incentivize which, again, is a criteria
7 within the six-part test, a very important one. And
8 so I could see a situation where the Company wants
9 to, you know, just that, push or -- or emphasize the
10 need for energy efficiency and, therefore, in order
11 to get the Company to kind of be accepted to it, to
12 allow for, you know, a deferral perhaps, again, that
13 would kind of -- thinking through it I can see where
14 that would very much be considered in the analysis
15 when it comes to I believe it's No. 6 of the
16 criteria.

17 Q. And you are aware that up through the end
18 of last year the Company has been required to comply
19 with the energy efficiency mandates that were enacted
20 in 2008?

21 A. Yes, sir.

22 MR. SHARKEY: Your Honors, I would ask to
23 go off the record.

24 EXAMINER SCHABO: Let's go off the
25 record.

1 (Discussion off the record.)

2 EXAMINER SCHABO: Let's go back on the
3 record.

4 Mr. Sharkey, I believe you indicated you
5 had a little bit more questioning left.

6 MR. SHARKEY: Thank you. Thank you, your
7 Honor.

8 Q. (By Mr. Sharkey) Just a couple more
9 questions, Mr. Lipthratt. First question is during
10 the course of your work on this case, did you come to
11 know the amount of the -- of AES Ohio's deferral
12 request at any point in time?

13 A. Yes. There was -- during settlement
14 negotiations there was some values shared at that
15 time, yes.

16 Q. I am not asking you -- we are going to
17 exclude settlement discussions, not including those,
18 but in terms of during the course of discovery, did
19 you come to know through the discovery process the
20 amount of the deferral that the Company seeks?

21 A. Yes. Initially early on we had issued a
22 DR on that, but I will be honest with you because
23 of -- I've come to rely on the settlement talks and
24 the values given during those that they were more up
25 to date and so that's what I used.

1 Q. Okay. Excluding settlement talks do you
2 recall the amount that you had seen previously in
3 response to the DR?

4 A. I don't, not right off. That's something
5 I intended to have available and I just never got
6 around to pulling that out.

7 Q. Do you recall whether it was more or less
8 than \$10 million?

9 A. Yeah, I believe it was more. I want --
10 going off memory it might have been 17 but here is
11 where I'm struggling, so the deferral Applicant, as I
12 understand it, was requesting the deferral to begin
13 December 19 of 20 -- oh, man 20 --

14 Q. '19, 2019.

15 A. Yeah, yeah. And then up through some
16 point in time in 2020 but I don't recall the dates.

17 Q. Okay. And then has Staff previously --
18 let me step back. Do you know whether Ohio utilities
19 have decoupling riders in place?

20 A. Yes. So recently FirstEnergy has
21 basically eliminated their CSR, basically their
22 decoupling reader. AEP has a -- a PTBAR, a
23 decoupling rider in effect today. However, through
24 publicly, you know, made -- made available publicly
25 settlement agreements, they are agreeing to withdraw

1 their PTBAR. And Duke has a decoupling rider that's
2 still in place today.

3 Q. And in 2019, did you sign a Staff Report
4 recommending that the AEP be able to recover its
5 PTBAR?

6 A. Most likely.

7 MR. SHARKEY: Thank you, Mr. Lipthratt.
8 And, your Honor, I have no further
9 questions.

10 EXAMINER SCHABO: Mr. Eubanks, do you
11 have any direct -- I'm sorry, redirect?

12 MR. EUBANKS: Your Honor, if I could have
13 5 minutes to confer. I know we just took a break,
14 but it wasn't at the conclusion so.

15 EXAMINER SCHABO: No, that's okay. I am
16 going to short you one minute. Let's come back on
17 the record at 6 o'clock -- I'm sorry, 5:40.

18 (Recess taken.)

19 EXAMINER SCHABO: All right. Let's go
20 back on the record.

21 Well, we lost Ms. Bojko again. She's
22 back.

23 All right. Mr. Eubanks, did you have any
24 redirect?

25 MR. EUBANKS: I do. I have one question.

1 EXAMINER SCHABO: Okay. Proceed.

2 - - -

3 REDIRECT EXAMINATION

4 By Mr. Eubanks:

5 Q. Mr. Lipthratt, does the Commission
6 generally approve deferrals without simultaneously
7 having a rider attached to the deferral for
8 collection?

9 A. Not always. There are times where there
10 are deferrals that just sit on the balance sheet with
11 no predefined home, if you will, or recovery
12 mechanism. I would point out though typically, you
13 know, in the context of the decoupling though, all
14 decoupling mechanisms generally have been approved in
15 the form of a rider and not a deferral -- deferral
16 authority.

17 MR. EUBANKS: I have no further
18 questions, your Honor.

19 EXAMINER SCHABO: Mr. Sharkey, anything
20 on that --

21 MR. SHARKEY: No, your Honor.

22 EXAMINER SCHABO: -- redirect?

23 MR. SHARKEY: No, your Honor.

24 EXAMINER SCHABO: Mr. Lipthratt, thank
25 you very much. You may be excused.

1 Mr. Eubanks, you have a motion to admit
2 Staff Exhibit 1 on the table. I will now ask if
3 there are any objections.

4 MR. SHARKEY: None from the Company.

5 EXAMINER SCHABO: Okay. Hearing none,
6 Staff Exhibit 1 will be admitted.

7 (EXHIBIT ADMITTED INTO EVIDENCE.)

8 EXAMINER SCHABO: I believe that is the
9 conclusion of the presentation of evidence today.
10 Now's your chance to tell me I'm dead wrong.

11 EXAMINER WILLIAMS: Does AES have
12 anything on the exhibits they discussed as part of
13 Mr. Lipthratt's testimony?

14 EXAMINER SCHABO: I believe they only
15 referred to exhibits talked about during Mr. Willis's
16 testimony but.

17 EXAMINER WILLIAMS: I wanted to make sure
18 that was the case.

19 MR. SHARKEY: It is correct. The only
20 exhibits we used during Mr. Lipthratt's testimony
21 were also used and, thus, admitted during examination
22 of Mr. Willis, so we have nothing further.

23 EXAMINER SCHABO: Great.

24 EXAMINER WILLIAMS: Judge Schabo, I
25 believe we did the conversation about briefing off

1 the record. I don't think we put that on the record
2 or not.

3 EXAMINER SCHABO: Yes, we did do the
4 conversation of briefing on the record -- off the
5 record. And during our conversation I believe we
6 came to the agreement that initial briefs will be due
7 June 18, and post-hearing reply briefs will be
8 July 9.

9 Anything else for the good of the order?

10 If not, I thank everyone for being with
11 us today. I remind you to e-mail your admitted
12 exhibits that are not prefiled to the docket, to this
13 specific docket, to the court reporter at
14 kspencer@aando.com.

15 That's my particular list. Judge
16 Williams?

17 EXAMINER WILLIAMS: You got everything
18 from me.

19 EXAMINER SCHABO: All right. Thank you,
20 everyone. We are adjourned.

21 (Thereupon, at 5:48 p.m., the hearing was
22 adjourned.)

23 - - -

24

25

CERTIFICATE

I do hereby certify that the foregoing is
a true and correct transcript of the proceedings
taken by me in this matter on Tuesday, May 4, 2021,
and carefully compared with my original stenographic
notes.

Karen Sue Gibson, Registered
Merit Reporter.

(KSG-7069)

- - -

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Case No(s). 20-0140-EL-AAM

Summary: Transcript May 4th 2021

In the Matter of the Application of The Dayton Power and Light Company for Approval to Defer Distribution Decoupling Costs. electronically filed by Mr. Ken Spencer on behalf of Armstrong & Okey, Inc. and Gibson, Karen Sue Mrs.